TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905

No. 4 Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP ET AL.

INFORMATION IN CONTEMPT.

FILED MAY 28, 1906.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 5. Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP ET AL.

INFORMATION IN CONTEMPT.

INDEX.

	Original.	Print.
Caption	1	1
Order granting leave to file information	2	1
Information	4	1
Rule to show cause	17	7
Rule issued	18	8
Proof of service of information and rule to show cause	19	8
Order granting leave to file answers	41	18
Answer of Joseph F. Shipp et al	43	18
Nick Nolan	50	22
Paul Werner	55	24
Luther Williams	61	26
William Marquette	69	30
William Beeler	92	43
Claude Powell	102	50
Charles J. Powell	107	52
Bart Justice	112	54
John Jones	117	56
A. J. Cartwright	122	57
R. T. Cartwright	127	59
Henry Padgett	132	61
William Mayes	137	63
Frank Ward	142	65
John Varnell	152	70
Alfred Handman	157	72

	Original.	Print.
Order for appearance for Shipp et al	162	74
Shipp et al	163	74
Handman et al	164	75
Handman et al	165	75
Handman et al	166	76
Williams et al	167	76
Marquette	168	77
Cartwrights	169	77
Order assigning cause for argument on preliminary questions of law	171	77
Motion to set down for hearing on preliminary questions of law	172	78
Brief for complainant on preliminary questions of law	178	79
Brief for defendants Shipp et al. on preliminary questions of law	217	96
Brief for defendants Nolan et al	237	108
Order for appearance for defendants	253	118
Order beginning argument on preliminary questions of law	255	119
Order concluding argument on preliminary questions of law	256	119
Brief for the complainant on claim that denials under oath purge contempt	258	119
Opinion by Mr. Justice Holmes	278	128
Order filing opinion and directing that cause proceed	283	131
Motion to arrest defendants and require recognizances	285	132
Motion for the summoning of witnesses and to take testimony	290	133
Motion for the summoning of witnesses for certain defendants at the expense of the Government	295	134
Motion for the summoning of witnesses for the defendant Marquette at the expense of the Government	308	141
Motion for the summoning of witnesses for certain defendants at the expense of the Government	312	142
Order submitting motion to arrest the defendants and require recognizances	327	150
Order submitting motion as to taking testimony, etc	328	150
Brief for Shipp et al. on motions for orders of arrest and for taking testimony	329	150
Order requiring defendants to enter into personal recognizances, etc	334	152
Order to nominate commissioner	335	153
Suggestion of the Attorney-General on motion to take testimony	337	153
Order granting leave to defendants to file briefs in opposition to suggestion of Attorney-General	343	155
Brief for defendants opposing motion of the Attorney-General to require witnesses to be examined in Washington	344	155
Nomination to the Court of commissioner to take testimony	349	157
Order submitting nomination of James D. Maher as commissioner	352	158
Answer of Ship et al. to suggestion that testimony be taken in Washington	354	158
Order appointing James D. Maher as commissioner, etc	364	163
Oath of James D. Maher, commissioner	367	164
Motion that reports of commissioner be filed	369	164
Order to open, publish, and file testimony	370	165
Order granting leave to file reports of commissioner, etc	371	165
Motion for leave to file stipulations	373	165
Report of commissioner as to taking testimony	375	166
Report of commissioner as to his expenses	377	167

	Original.	Print.
Stipulation as to misnomer of certain defendants	380	168
Stipulation as to testimony	381	169
Stipulation as to facts	382	169
Testimony taken before James D. Maher, commissioner	1	173
Remarks of the commissioner, etc	1	173
Appearances for the parties, etc	3	174
Stipulation as to facts	6	175
Telegram from James H. McKenney, clerk, to sheriff of Hamilton County, Tenn., March 19, 1906	11	178
Evidence for the Government	12	179
Testimony of Alfred W. Brazelton	12	179
L. G. Walker	26	187
Milton B. Ochs	49	201
James G. Rice	55	204
Edward Chaddick	64	208
John L. Chivington	73	213
Mrs. Ellen Baker	123	242
J. P. Fyffe	150	257
John T. Evans	161	263
Dr. Howard L. Jones	177	272
Carl J. Rowden	181	274
David R. Walker	196	282
Julia Wofford	207	289
Fred Smith	219	295
W. C. Flournoy (omitted in printing)	246	....
J. N. Stonecipher	260	309
Preston W. Walker	283	323
Newspaper article "The Johnson Case Again"	313	339
Testimony of J. T. Barnes	314	340
Robert K. Lyon	328	348
William Tarpley	343	356
Robert K. Lyon (recalled)	349	359
L. M. Pindell	353	361
Joseph R. Curtis	356	363
T. S. Wilcox, sr	376	373
William Walker	386	378
H. B. W. Howie	400	385
A. J. Ware	406	389
M. Stokes	429	401
Arthur Waller	446	410
Thomas A. Dobbs	492	434
George B. David	495	436
John Noll	498	438
Joe Franklin	509	443
Government rests	615	499
Evidence for defendant Handman	615	499
Testimony of Dr. A. W. Boyd	615	499
Mrs. Kelly O'Rear (omitted in printing)	623	....
Richard E. Pooler (omitted in printing)	628	....
John J. Kean (omitted in printing)	632	....
Miss Addie Handman (omitted in printing)	639	....
Alfred Handman (omitted in printing)	643	....
A. N. Sloan	652	504

	Original.	Print.
Testimony taken before James D. Maher, commissioner—Cont'd.		
Testimony of L. W. Bates (omitted in printing)	666	....
Joseph Tramby (omitted in printing)	666	....
W. B. Cox	669	511
Joe Franklin (recalled)	672	513
Evidence for defendant Justice	706	531
Testimony of A. J. Ware	706	531
James F. James	718	538
Fred Fryar	726	542
Mrs. Adelia Justice	734	547
Miss Emma Justice	736	548
Henry P. Fry	744	552
J. B. Justice	750	555
Evidence for defendant Marquette	766	563
Testimony of E. C. Johnston (omitted in printing)	766	....
John Kersten (omitted in printing)	776	....
H. M. Allen (omitted in printing)	782	....
Robert H. Mastin (omitted in printing)	788	....
W. D. Bowers (omitted in printing)	791	....
Dr. Cooper Holtzclaw	798	564
William Marquette (omitted in printing)	815	....
Evidence for defendant Werner (omitted in printing)	830	....
Testimony of C. W. O'Connor (omitted in printing)	830	....
Mrs. C. W. O'Connor (omitted in printing)	843	....
Mrs. Theresa Werner (omitted in printing)	848	....
Paul Werner (omitted in printing)	856	....
Evidence for defendant Mays	870	573
Testimony of William J. Mays	870	574
Mrs. W. J. Mays	901	591
Evidence for defendant Nolan	909	595
Testimony of John L. Chivington	909	595
James P. Pemberton	917	599
John D. Vogt	933	608
John Nolan	935	609
J. C. Williamson	947	616
Alfred Smith	954	620
Nicholas Nolan	963	624
Additional evidence for defendant Mays	974	630
Testimony of A. C. Lieb	974	630
Evidence for defendant Padgett	978	632
Testimony of Albert C. Chambers	978	632
David H. McJunkin	995	641
W. B. Gray	1004	645
Thomas F. Duckworth	1017	653
Ewing White	1029	659
Matthew F. Pitner	1033	661
Henry Padgett	1037	633
Evidence for defendant Ward	1061	675
Testimony of W. P. Barnes	1061	675
J. M. Prince	1076	683
Frank Ward	1088	689
John R. Pitner	1115	703
H. D. Rider	1123	707

Testimony taken before James D. Maher, commissioner—Cont'd.	Original.	Print.
Testimony of T. J. Moody	1132	711
T. J. Sholl	1141	716
Evidence for defendant Williams	1144	718
Testimony of Solomon Geismar	1147	719
J. O. Martin	1152	722
Samuel A. Conner	1156	724
C. W. Cox	1163	727
Edward G. Spencer	1168	730
B. A. Close	1174	733
Luther Williams	1183	738
Evidence for defendant Jones	1206	750
Testimony of T. A. Boone (omitted in printing)	1206	....
Frank M. Jones (omitted in printing)	1214	750
Azariah Shelton (omitted in printing)	1250	768
J. P. Webb (omitted in printing)	1256	771
E. D. Bass (omitted in printing)	1258	772
William Shelton (omitted in printing)	1259	773
H. D. Huffaker (omitted in printing)	1260	773
W. P. Barnes (recalled)	1261	774
Additional evidence for defendant Williams	1262	774
Testimony of T. G. Newman	1263	775
Mittimus issued by T. A. Boone, J. P.	1272	....
Evidence for defendant Jones (omitted in printing)	1272	....
Testimony of J. A. Hogan (omitted in printing)	1272	....
Frank M. Jones (omitted in printing)	1279	....
Evidence for defendant Nolan (omitted in printing)	1281	....
Testimony of Robert E. Pritchard	1281	779
Evidence for defendants Brown and Taylor (omitted in printing)	1291	....
Testimony of J. F. Barnes (omitted in printing)	1291	....
Capt. G. W. Brown (omitted in printing)	1293	....
J. P. Fyffe (omitted in printing)	1350	....
S. W. Ault (omitted in printing)	1353	....
Oscar Yarnell	1360	784
A. N. Sloan (omitted in printing)	1376	....
W. P. Hays (omitted in printing)	1377	....
Wilson Kerr (omitted in printing)	1384	....
R. H. Howard (omitted in printing)	1389	....
J. Y. McDaniel (omitted in printing)	1391	....
Thomas Cowart (omitted in printing)	1396	....
W. C. Hartman (omitted in printing)	1400	....
S. M. Walker (omitted in printing)	1405	....
William A. Martin (omitted in printing)	1416	....
Joseph Trimby (recalled) (omitted in printing)	1422	....
Thomas B. Taylor (omitted in printing)	1424	....
W. E. Dyer (omitted in printing)	1450	....
Dr. A. W. Palmer (omitted in printing)	1453	....
George Jones (omitted in printing)	1456	....
J. K. Hodges (omitted in printing)	1457	....
Oscar Yarnell (recalled) (omitted in printing)	1462	....
B. A. Deakins (omitted in printing)	1464	....
James F. Perrin (omitted in printing)	1477	....
Mrs. Joseph Clark (omitted in printing)	1482	....

	Original.	Print.
Testimony taken before James D. Maher, commissioner—Cont'd.		
Testimony of E. M. Dixon (omitted in printing)	1486	....
James Godsey (omitted in printing)	1496	....
Dr. M. J. Lewis	1502	792
R. J. Gorbet (omitted in printing)	1513	....
J. C. McGhee (omitted in printing)	1525	798
W. G. Snyder (omitted in printing)	1530	....
O. G. Stone	1531	800
Joseph C. Clark (omitted in printing)	1543	....
E. D. Herron	1556	806
Dr. Frank L. Wood (omitted in printing)	1561	....
R. G. Pursley (omitted in printing)	1566	809
Harry Reed (omitted in printing)	1569	810
Frank W. Wallace (omitted in printing)	1572	812
Charles Watson	1576	813
J. J. Bork	1584	818
R. A. Williams	1589	820
George W. Edwards	1598	825
David W. Lamon	1601	826
G. M. Ashbrook (omitted in printing)	1608	....
Marion Perkins	1614	830
Evidence for defendants Shipp et al	1633	840
Testimony of M. N. Whittaker	1633	840
Rev. Ira M. Boswell	1686	866
Hon. C. D. Clark	1710	878
Robert A. Pritchard (recalled)	1727	887
Hon. S. D. McReynolds	1731	890
Evidence for defendant Baker (omitted in printing)	1791	....
Testimony of A. J. Glenn (omitted in printing)	1791	....
Rev. J. W. Bachman	1793	921
Rev. Wm. C. Robertson	1825	936
Thomas H. Payne	1834	942
R. H. Parrent	1840	945
James A. Caldwell	1857	954
John B. Nicklin	1859	955
F. H. Dowler	1872	961
Pembroke A. Brawner	1880	965
Charles Herron	1892	971
William E. Love	1899	975
Dr. P. D. Simms	1908	979
Samuel T. Dewees	1928	989
Judge C. D. Clark	1946	997
John H. Cantrell	1947	998
Houston Gibson	1963	1006
Mrs. Nellie Ward	1975	1012
W. A. Meyer	1980	1014
Mrs. W. A. Meyer	1983	1016
Mrs. Lillie S. Hardin	1987	1018
Jeremiah Gibson	1990	1019
Walter D. Spradley	2038	1044
Jerry Gibson (resumed)	2050	1050
Will Burk	2065	1058
Matt Galloway	2072	1061

	Original.	Print.
Testimony taken before James D. Maher, commissioner—Cont'd.		
Testimony of C. A. Baker	2104	1077
M. J. Horan	2118	1085
J. S. Bell	2128	1090
John B. Cameron	2133	1093
Capt. Joseph F. Shipp	2135	1094
W. T. Center	2202	1127
J. H. Stuart	2207	1129
Defendants rest	2210	1131
Evidence for the Government in rebuttal	2213	1133
Testimony of Mrs. J. H. Springfield	2213	1133
Claude Springfield	2223	1139
George F. Neese	2236	1145
H. H. Sutton (omitted in printing)	2238	1146
J. A. Walters	2246	1146
S. H. Ledford	2251	1148
Charles Smith	2257	1152
A. J. Cox	2261	1154
Evidence closed	2274	1160
Exhibit Martin No. 1. Acct. of Geo. W. Brown with Geo. Martin & Co., January 31, 1906	2275	1161
No. 2. Acct. of Geo. W. Brown with Geo. Martin & Co., February 28, 1906	2276	1161
No. 3. Acct. of Geo. W. Brown with Geo. Martin & Co., March 31, 1906	2277	1162
Exhibit Taylor No. 1. Letter of J. F. Shipp to Thomas B. Taylor, August 24, 1904	2278	1162
No. 2. Appointment of Thomas B. Taylor as special deputy sheriff, September 1, 1904	2279	1163
No. 3. Invitation of Hill City Lodge, I. O. O. F., to an entertainment March 19, 1906, and envelope	2280	1163
Exhibit "Clark." Appointment of J. C. Clark as justice court officer, September 31, 1906	2281	1163
Exhibit A (Shipp). First floor plan of Hamilton County jail	2282	....
Exhibit B (Shipp). Second floor plan of Hamilton County jail	2283	....
Order fixing compensation of James D. Maher, commissioner	A 2	1164
Motion for leave to take additional testimony	A 4	1164
Answer to motion for leave to take additional testimony	A 10	1166
Order submitting motion for leave to take additional testimony, etc	A 17	1169
Order to take additional testimony and appointing commissioner	A 19	1169
Order filing reports of commissioner, etc	A 21	1169
Order to open, publish, and file additional testimony	A 23	1160
Order of dismissal as to certain defendants	A 24	1170
Report of commissioner as to additional testimony	A 26	1170
Report of commissioner as to expenses	A 28	1171
Motion to dismiss as to certain defendants	A 30	1172
Additional testimony taken before James D. Maher, commissioner	A 43	1177
Testimony of Henry A. Lee	1	1178
Addie Lee	59	1210
Henry A. Lee (recalled)	92	1229
R. L. Killian	97	1231
George T. Balfour	106	1236

	Original.	Print.
Additional testimony taken before James D. Maher, commissioner—Con.		
Testimony of P. C. Cramer	111	1239
C. L. Ramsey	120	1244
John E. Taylor	128	1248
A. V. Odem	138	1254
John E. Taylor (recalled)	141	1255
Dr H. K. Bearden	143	1256
J. N. Payne	148	1258
J. P. Webb	152	1260
Henry A. Lee (recalled)	154	1261
B. A. Close	155	1261
J. H. Jeunot	159	1264
J. L. Elliott	163	1266
N. A. Smith	169	1269
Stipulation as to additional testimony	176	1273
Order fixing compensation of commissioner, etc	178	1273
Stipulation as to printing testimony and record	179	1274

1 At the Capitol of the United States, in the city of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the ninth day of the same month) in the year of our Lord one thousand nine hundred and five, and of the independence of the United States the one hundred and thirtieth, the Supreme Court of the United States met agreeably to law.

And afterwards, to wit: On the 28th day of May, 1906, the following order appears of record, viz:

2 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainant, *vs.* JOHN F. SHIPP ET AL.	Oct. Term, 1905. No. 26. Original.

On motion of Mr. Attorney-General Moody, of counsel for the complainants, leave is hereby granted to file an information in contempt herein.

May 28, 1906.

(Endorsed:) Supreme Court of the United States, October term, 1905. No. 26. Original. Order. Filed May 28, 1906.

3 And on the same day, to wit, on the 28th day of May, 1906, the information was filed in the words and figures following, viz:

4 No. 26. Original. October term, 1905.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainants, *v.* JOHN F. SHIPP AND OTHERS, defendants.	

Information.

WILLIAM H. MOODY,
Attorney-General.

5 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainants, *v.* JOHN F. SHIPP, FRANK JONES, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan, "Sheenie" Warner, Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice, John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond, defendants.	October term, 1905. No. —. Original.

Information.

To the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now come the United States of America by William H. Moody, their Attorney-General, and in their behalf inform the court as follows:

1. That on the 11th day of February, 1906, one Ed Johnson,
6 a citizen of the United States and a resident and citizen of the State of Tennessee, and a colored person of African descent, was convicted of the crime of rape in the criminal court of Hamilton County, held at the city of Chattanooga, in the State of Tennessee, and said court thereupon sentenced the said Ed Johnson to suffer the penalty of death.

2. That thereafter, to wit, on the 3d day of March, 1906, and before the date set for the execution of the said Ed Johnson, a petition for a writ of habeas corpus, signed by the said Ed Johnson, as petitioner, was duly presented to the United States Circuit Court for the Northern Division of the Eastern District of Tennessee, in which it was alleged, among other things, that upon the trial of the said Ed Johnson in the criminal court of Hamilton County in the State of Tennessee for the crime of rape, for which he had been convicted, said petitioner had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution; that thereafter, to wit, on the 10th day of March, 1906, the application of the said Ed Johnson for a

writ of habeas corpus came on for hearing before the said United States Court for the Eastern District of Tennessee upon the petition, return, answer, and replication, and upon the testimony of witnesses given orally in open court, and after argument of counsel, the
7 said Circuit Court ordered that said petition be dismissed, and that the writ of habeas corpus prayed for in said petition be denied. It was further ordered by the said Circuit Court of the United States that said petitioner be remanded to the custody of the sheriff of said Hamilton County in the said State of Tennessee, to be detained by said sheriff in his custody for the period of ten days in which to enable said petitioner to prosecute an appeal from said order, should he be so advised and should an appeal lie from said order, and in default of the prosecution of an appeal within said time to be then further proceeded with by the court of the State of Tennessee under its sentence; that thereafter, to wit, on the 17th day of March, 1906, an application was duly presented by the said Ed Johnson to the Hon. John M. Harlan, an associate justice of the Supreme Court of the United States, assigned to the Sixth Circuit, asking that an appeal be allowed to the Supreme Court of the United States from the judgment rendered in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee on March 10, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, as aforesaid, which said appeal was on the same day duly allowed by Mr. Justice Harlan; that thereafter, to wit, on the 19th day of March, 1906, a motion was duly made in the Supreme Court of the United States by Mr. E. M. Hewlett, counsel for and representing the said Ed Johnson, for an order allowing an appeal to the Supreme Court of the United States from
8 the judgment of the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, rendered on the 10th day of March, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, which motion was thereupon granted by the Supreme Court of the United States and an order duly made and entered by the Chief Justice in the words and figures following, to wit:

"Ed Johnson, appellant, v. The State of Tennessee.

"On motion of Mr. E. M. Hewlett, of counsel for the appellant, it is ordered by the court that an appeal from the Circuit Court of the United States for the Eastern District of Tennessee be, and the same is hereby, allowed, and that all proceedings against the appellant be stayed, and the custody of the said appellant be retained pending this appeal.

"Per Mr. Chief Justice Fuller."

All of which more fully appears from the record in the case entitled "Ed Johnson, Appellant, v. The State of Tennessee," on file in the office of the clerk of this court.

3. This honorable court is further informed of the following facts, which are alleged and stated by the Attorney-General solely upon information and belief:

That on the same day, to wit, the said 19th day of March, 1906, and after the making and entering of said order, as aforesaid, the clerk of the Supreme Court of the United States duly notified by telegraph John F. Shipp, the sheriff of said Hamilton County,
9 in the State of Tennessee, of the making and entering said order, as aforesaid, and of the contents thereof, to wit, that all proceedings against the said Ed Johnson were ordered stayed by the said Supreme Court and that the custody of the said Ed Johnson by the said John F. Shipp, as sheriff of said Hamilton County, should be retained by him, the said John F. Shipp, pending the determination of said appeal in the Supreme Court; that said telegram informing the said John F. Shipp of the action of this honorable court was received by said sheriff before 6 o'clock on the evening of the said 19th day of March, 1906; that in addition to the notification by telegraph of the action of this court in allowing said appeal and staying proceedings against the said Ed Johnson, as aforesaid, there was published and circulated in the said city of Chattanooga in the evening papers on the said 19th day of March, 1906, a full account of the action of the Supreme Court of the United States in allowing an appeal and granting a stay of further proceedings on the part of the State courts against the said Ed Johnson until the determination of said appeal before the Supreme Court of the United States.

4. That during all the times herein mentioned the above-named defendant, John F. Shipp, was the duly elected, qualified, and acting sheriff of Hamilton County, in the State of Tennessee, and as such sheriff had and exercised full charge and control of the county jail, located in the city of Chattanooga, in said county, and was the
10 legal custodian under the laws of Tennessee of all persons duly committed in said county under the laws of said State to confinement and imprisonment within said jail; that the above-named defendants, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, and each of them, were, during all the times herein mentioned, the duly appointed, qualified, and acting deputy sheriffs of said county and State; that said sheriff and said deputy sheriffs and each of them, before the hour of 6 o'clock on the evening of the said 19th day of March, 1906, were fully advised and informed of the action taken by the Supreme Court of the United States with respect to the appeal of the said Ed Johnson, as hereinbefore set forth; that the said Ed Johnson was then and there a prisoner confined and restrained of his liberty in the said county jail and in the lawful custody and control of said sheriff and said deputy sheriffs under a commitment duly issued out of the criminal court of said Hamilton County and under and pursuant to the orders of the said United States Circuit Court for the Northern Division of the Eastern District of Tennessee and the Supreme Court of the United States

made and entered, as aforesaid; that said sheriff and said deputy sheriffs on the said 19th day of March, 1906, after having been advised of the action of the Supreme Court of the United States, as aforesaid, were informed, and had every reason to believe, from current reports and rumors conveyed to them and each of them, that an attempt would be made on the evening of said day or
11 early in the morning of the following day by a mob composed of a large number of armed men to force an entrance into the said county jail for the purpose of taking therefrom by violence and unlawful means the said Ed Johnson and putting him to death; that notwithstanding said rumors and said reports which were conveyed to said sheriff and his said deputies, as aforesaid, the said sheriff withdrew from said jail early in the evening of said day the usual and customary guard and left in charge thereof only the night jailer, to wit, Deputy Sheriff Jeremiah Gibson, and committed other acts and did other things, evincing a purpose and disposition on the part of said sheriff to render it less difficult and less dangerous for said mob to prosecute and carry into effect its unlawful design and purpose, to wit, the lynching of the said Ed Johnson, designed and planned as aforesaid.

5. That thereafter, to wit, at about the hour of 9 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga, in the said county and State, the above-named defendants, John F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan (whose true first name is to complainants unknown), "Sheenie" Warner (whose true first name is to complainants unknown), Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice (whose true first name is to complainants unknown),
12 John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond, and each of them, and a large number of other persons whose names are to complainants unknown, did then and there willfully, unlawfully, and wrongfully combine, conspire, confederate, and agree together to break and enter the said county jail of Hamilton County for the purpose of taking therefrom the person of the said Ed Johnson to lynch and murder him, the said Ed Johnson, with the intent then and there had and entertained by the said defendants, and each of them, to show their contempt and disregard for the order of this honorable court made, entered, issued, and published, as aforesaid, and for the purpose of preventing this honorable court from hearing the appeal of the said Ed Johnson, allowed by this court, as aforesaid, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States; that in the prosecution and furtherance of said unlawful conspiracy, made and entered into as aforesaid, and in order to show their contempt and disregard for the said order of this honorable court, and in order to prevent

this court from hearing said appeal, said defendants and each of them did then and there do the things and commit the acts more particularly described, as follows, to wit:

That between the hours of 9 and 12 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga, in the county and State aforesaid, a large number of persons, including the above-named defendants, with the exception of the said John F.
13 Shipp, the sheriff of said county, and the said Jeremiah Gibson, deputy sheriff of said county, assembled in the vicinity of said county jail, and thereupon said mob unlawfully and wrongfully entered said jail and with force and arms broke open the cell in which the said Ed Johnson was then and there confined as a prisoner, and with force and violence and against the will of him, the said Ed Johnson, took him, the said Ed Johnson, from said jail to a point a short distance therefrom and hanged him, the said Ed Johnson, by the neck until he was dead; that at the time said mob entered said jail, as aforesaid, the only person in charge thereof was the said deputy sheriff, Jeremiah Gibson; that while the mob was in possession of said jail the said sheriff, John F. Shipp, arrived at said jail, but made no effort to prevent said mob or any of the members thereof from taking the said Ed Johnson from said jail; that the said John F. Shipp and the said Jeremiah Gibson were in truth and in fact in sympathy with said mob and, while pretending to perform their duty as officials of said county and State in affording protection to the said Ed Johnson, who was then and there in their lawful custody and control, the said John F. Shipp and the said Jeremiah Gibson and each of them did in truth and in fact aid and abet said mob and the members thereof in the prosecution and performance of their unlawful act in lynching and murdering the said Ed Johnson, as aforesaid; that during all this time the above-named defendants and each of them, and the said John F. Shipp and the said Jere-
14 miah Gibson and each of them then and there well knew that the Supreme Court of the United States had made, entered, issued, and published the order in the manner hereinbefore set forth; that all of said acts were then and there committed by said defendants and each of them, and the other members of said mob whose names are to complainants unknown, with the intent then and there had and entertained by them and by each of them to show their contempt and utter disregard for the order of this honorable court made and entered, as aforesaid, and in order to prevent this honorable court from hearing the appeal of the said Ed Johnson, which appeal had been perfected and allowed, as aforesaid.

6. Wherefore, the United States of America, the complainants herein, through their Attorney-General, respectfully request this honorable court that in consideration of the acts committed by the above-named defendants and each of them, as hereinbefore set forth, it will issue and direct the marshal of this court to serve upon said defendants and each of them a rule to show cause, if any there be, on a day

certain why said defendants and each of them should not be punished as and for a contempt of this honorable court.

WILLIAM H. MOODY,
The Attorney-General of the United States.

WASHINGTON, D. C., *May 25th, 1906.*

15 UNITED STATES OF AMERICA,
District of Columbia, ss:

William H. Moody, being first duly sworn, deposes and says that he is the Attorney-General of the United States, and that he has read the foregoing information, and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

Subscribed and sworn to before me this 25th day of May, 1906.

A. C. CAINE. [SEAL.]
Notary Public, District of Columbia.

16 (Endorsed:) Supreme Court of the United States. October term, 1905. The United States of America, complainants, v. John F. Shipp et al. No. 26. Original. Information. Filed May 28, 1906.

17 And on the same day, to wit, the 28th day of May, A. D. 1906, a rule to show cause was entered. in the words & figures following, viz:

Supreme Court of the United States.

THE UNITED STATES OF AMERICA COMPLAINANTS, *vs.* JOHN F. SHIPP, FRANK JONES, MATTHEW GALLOWAY, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan, "Sheenie" Warner, Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice, John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond, defendants.	October term, 1905. No. 26. Original.

On consideration of the information filed herein,

It is now here ordered by the court that cause be shown by the above-named defendants and each of them before this court, at the city of Washington, on Monday, October 15th, 1906, at twelve o'clock noon of that day, or as soon thereafter as counsel can be heard, why they and each of them should not be punished as and for a contempt of this court.

May 28, 1906.

(Endorsed:) Supreme Court of the United States, October term, 1905, No. 26, Original. Rule to show cause. Filed May 28, 1906.

18 And afterwards, to wit, on the 4th day of June, A. D. 1906, the rule was issued.

And afterwards, to wit, on the 15th day of October, A. D. 1906, proof of service of rule on all of the defendants except Paul Pool was filed in the words and figures following, viz:

19 No. 26. Original. October term, 1905.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainants,
v.
JOHN F. SHIPP AND OTHERS, defendants.

Information.

WILLIAM H. MOODY,
Attorney-General.

20 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
v.
JOHN F. SHIPP, FRANK JONES, MATTHEW GALLOWAY, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan, "Sheenie" Warner, Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice, John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond, defendants.

October term, 1905. No. —. Original.

Information.

To the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now come the United States of America by William H. Moody, their Attorney-General, and in their behalf inform the court as follows:

1. That on the 11th day of February, 1906, one Ed John-
21 son, a citizen of the United States and a resident and citizen of the State of Tennessee, and a colored person of African

descent, was convicted of the crime of rape in the criminal court of Hamilton County, held at the city of Chattanooga in the State of Tennessee, and said court thereupon sentenced the said Ed Johnson to suffer the penalty of death.

2. That thereafter, to wit, on the 3d day of March, 1906, and before the date set for the execution of the said Ed Johnson, a petition for a writ of habeas corpus, signed by the said Ed Johnson, as petitioner, was duly presented to the United States Circuit Court for the Northern Division of the Eastern District of Tennessee, in which it was alleged, among other things, that upon the trial of the said Ed Johnson in the criminal court of Hamilton County in the State of Tennessee for the crime of rape, for which he had been convicted, said petitioner had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution; that thereafter, to wit, on the 10th day of March, 1906, the application of the said Ed Johnson for a writ of habeas corpus came on for hearing before the said United States Court for the Eastern District of Tennessee upon the petition, return, answer, and replication, and upon the testimony of witnesses given orally in open court, and after argument of coun-
22 sel, the said Circuit Court ordered that said petition be dismissed, and that the writ of habeas corpus prayed for in said petition be denied. It was further ordered by the said Circuit Court of the United States that said petitioner be remanded to the custody of the sheriff of said Hamilton County in the said State of Tennessee, to be detained by said sheriff in his custody for the period of ten days in which to enable said petitioner to prosecute an appeal from said order, should he be so advised and should an appeal lie from said order, and in default of the prosecution of an appeal within said time to be then further proceeded with by the court of the State of Tennesse under its sentence; that thereafter, to wit, on the 17th day of March, 1906, an application was duly presented by the said Ed Johnson to the Hon. John M. Harlan, an associate justice of the Supreme Court of the United States, assigned to the Sixth Circuit, asking that an appeal be allowed to the Supreme Court of the United States from the judgment rendered in the Circuit court of the United States for the Northern Division of the Eastern District of Tennessee on March 10, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, as aforesaid, which said appeal was on the same day duly allowed by Mr. Justice Harlan; that thereafter, to wit, on the 19th day of March, 1906, a motion was duly made in the Supreme Court of the United States by Mr. E. M. Hewlett, counsel for and representing the said Ed Johnson, for an order allowing an appeal to the Supreme Court of the United States from the
23 judgment of the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, ren-

dered on the 10th day of March, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, which motion was thereupon granted by the Supreme Court of the United States and an order duly made and entered by the Chief Justice in the words and figures following, to wit:

"Ed Johnson, appellant, v. The State of Tennessee.

"On motion of Mr. E. M. Hewlett, of counsel for the appellant, it is ordered by the court that an appeal from the Circuit Court of the United States for the Eastern District of Tennessee be, and the same is hereby, allowed, and that all proceedings against the appellant be stayed, and the custody of the said appellant be retained pending this appeal.

"Per Mr. Chief Justice Fuller."

All of which more fully appears from the record in the case entitled "Ed Johnson, appellant, v. The State of Tennessee," on file in the office of the clerk of this court.

3. This honrable court is further informed of the following facts, which are alleged and stated by the Attorney-General solely upon information and belief:

That on the same day, to wit, the said 19th day of March, 1906, and after the making and entering of said order, as aforesaid, the clerk of the Supreme Court of the United States duly notified by telegraph John F. Shipp, the sheriff of said Hamilton County, in the
24 State of Tennessee, of the making and entering said order, as aforesaid, and of the contents thereof, to wit, that all proceedings against the said Ed Johnson were ordered stayed by the said Supreme Court and that the custody of the said Ed Johnson by the said John F. Shipp, as sheriff of said Hamilton County, should be retained by him, the said John F. Shipp, pending the determination of said appeal in the Supreme Court; that said telegram informing the said John F. Shipp of the action of this honorable court was received by said sheriff before 6 o'clock on the evening of the said 19th day of March, 1906; that in addition to the notification by telegraph of the action of this court in allowing said appeal and staying proceedings against the said Ed Johnson, as aforesaid, there was published and circulated in the said city of Chattanooga in the evening papers on the said 19th day of March, 1906, a full account of the action of the Supreme Court of the United States in allowing an appeal and granting a stay of further proceedings on the part of the state courts against the said Ed Johnson until the determination of said appeal before the Supreme Court of the United States.

4. That during all the times herein mentioned the above-named defendant, John F. Shipp, was the duly elected, qualified, and acting sheriff of Hamilton County, in the State of Tennessee, and as such sheriff had and exercised full charge and control of the county jail, located in the city of Chattanooga, in said county, and was the
25 legal custodian under the laws of Tennessee of all persons duly committed in said county under the laws of said State to con-

finement and imprisonment within said jail; that the above-named defendants, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, and each of them, were, during all the times herein mentioned, the duly appointed, qualified, and acting deputy sheriffs of said county and State; that said sheriff and said deputy sheriffs and each of them before the hour of 6 o'clock on the evening of the said 19th day of March, 1906, were fully advised and informed of the action taken by the Supreme Court of the United States with respect to the appeal of the said Ed Johnson, as hereinbefore set forth; that the said Ed Johnson was then and there a prisoner confined and restrained of his liberty in the said county jail and in the lawful custody and control of said sheriff and said deputy sheriffs under a commitment duly issued out of the criminal court of said Hamilton County, and under and pursuant to the orders of the said United States Circuit Court for the Northern Division of the Eastern District of Tennessee and the Supreme Court of the United States made and entered as aforesaid; that said sheriff and said deputy sheriffs on the said 19th day of March, 1906, after having been advised of the action of the Supreme Court of the United States, as aforesaid, were informed, and had every reason to believe, from current reports and rumors conveyed to them and each of them, that an
26 attempt would be made on the evening of said day or early in the morning of the following day, by a mob composed of a large number of armed men, to force an entrance into the said county jail for the purpose of taking therefrom by violence and unlawful means the said Ed Johnson and putting him to death; that notwithstanding said rumors and said reports which were conveyed to said sheriff and his said deputies, as aforesaid, the said sheriff withdrew from said jail early in the evening of said day the usual and customary guard and left in charge thereof only the night jailer, to wit, Deputy Sheriff Jeremiah Gibson, and committed other acts and did other things, evincing a purpose and disposition on the part of said sheriff to render it less difficult and less dangerous for said mob to prosecute and carry into effect its unlawful design and purpose, to wit, the lynching of the said Ed Johnson, designed and planned as aforesaid.

5. That thereafter, to wit, at about the hour of 9 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga in the said county and State, the above-named defendants, John F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan (whose true first name is to complainants unknown), "Sheenie" Warner (whose true first name is to complainants unknown), Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice (whose true first name is to complainants unknown), John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett,
27 William May, Frank Ward, John Varnell, and Alfred Hammond, and each of them, and a large number of other per-

sons whose names are to complainants unknown, did then and there willfully, unlawfully, and wrongfully combine, conspire, confederate, and agree together to break and enter the said county jail of Hamilton County for the purpose of taking therefrom the person of the said Ed Johnson, to lynch and murder him, the said Ed Johnson, with the intent then and there had and entertained by the said defendants, and each of them, to show their contempt and disregard for the order of this honorable court made, entered, issued, and published as aforesaid, and for the purpose of preventing this honorable court from hearing the appeal of the said Ed Johnson, allowed by this court, as aforesaid, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States; that in the prosecution and furtherance of said unlawful conspiracy, made and entered into as aforesaid, and in order to show their contempt and disregard for the said order of this honorable court, and in order to prevent this court from hearing said appeal, said defendants and each of them did then and there do the things and commit the acts more particularly described, as follows, to wit:

That between the hours of 9 and 12 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga, in the county and State aforesaid, a large number of persons, including the above-named defendants, with the exception of the said
28 John F. Shipp, the sheriff of said county, and the said Jeremiah Gibson, deputy sheriff of said county, assembled in the vicinity of said county jail, and thereupon said mob unlawfully and wrongfully entered said jail and with force and arms broke open the cell in which the said Ed Johnson was then and there confined as a prisoner, and with force and violence and against the will of him, the said Ed Johnson, took him, the said Ed Johnson, from said jail to a point a short distance therefrom and hanged him, the said Ed Johnson, by the neck until he was dead; that at the time said mob entered said jail, as aforesaid, the only person in charge thereof was the said deputy sheriff, Jeremiah Gibson; that while the mob was in possession of said jail the said sheriff, John F. Shipp, arrived at said jail, but made no effort to prevent said mob or any of the members thereof from taking the said Ed Johnson from said jail; that the said John F. Shipp and the said Jeremiah Gibson were in truth and in fact in sympathy with said mob and, while pretending to perform their duty as officials of said county and State in affording protection to the said Ed Johnson, who was then and there in their lawful custody and control, the said John F. Shipp and the said Jeremiah Gibson and each of them did in truth and in fact aid and abet said mob and the members thereof in the prosecution and performance of their unlawful act in lynching and murdering the said Ed Johnson, as aforesaid; that during all this time the above-named defendants and each of them, and the said John F. Shipp and the said Jeremiah Gibson and each of them then and there
29 well knew that the Supreme Court of the United States had made, entered, issued, and published the order in the man-

ner hereinbefore set forth; that all of said acts were then and there committed by said defendants and each of them, and the other members of said mob whose names are to complainants unknown, with the intent then and there had and entertained by them and by each of them to show their contempt and utter disregard for the order of this honorable court made and entered as aforesaid, and in order to prevent this honorable court from hearing the appeal of the said Ed Johnson, which appeal had been perfected and allowed, as aforesaid.

6. Wherefore, the United States of America, the complainants herein, through their Attorney-General, respectfully request this honorable court that in consideration of the acts committed by the above-named defendants and each of them, as hereinbefore set forth, it will issue and direct the marshal of this court to serve upon said defendants and each of them a rule to show cause, if any there be, on a day certain why said defendants and each of them should not be punished as and for a contempt of this honorable court.

WILLIAM H. MOODY,
The Attorney-General of the United States.

WASHINGTON, D. C., *May 25th, 1906.*

30 UNITED STATES OF AMERICA,
District of Columbia, ss:

William H. Moody, being first duly sworn, deposes and says that he is the Attorney-General of the United States, and that he has read the foregoing information, and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

Subscribed and sworn to before me this 25th day of May, 1906.

A. C. CAINE, [SEAL.]
Notary Public, District of Columbia.

31 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainant, *vs.* JOHN F. SHIPP, FRANK JONES, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan, "Sheenie" Warner, Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice, John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond, defendants.	October term, 1905. Original.	No. 26.

On consideration of the information filed herein, it is now here ordered by the court that cause be shown by the above-named defendants and each of them, before this court, at the city of Washington, on Monday, October 15, 1906, at twelve o'clock noon of that day, or as soon thereafter as counsel can be heard, why they and each of them should not be punished as and for a contempt of this court.

MAY 28, 1906.

32 Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing are true copies of the information and rule to show cause granted thereon in the case of the United States of America, complainant, vs. John F. Shipp and others, defendants, No. 26, original, October term, 1905, as the same remain upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this 4th day of June, A. D. 1906.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Came to hand at my office the 4th day of June, A. D. 1906, and for the purpose of serving the same, I, J. M. Wright, marshal of the Supreme Court of the United States, do hereby authorize and deputize William A. Dunlap, United States marshal for the Eastern District of Tennessee, or any of his deputies, to serve the within rule to show cause on the parties named therein, and make due return thereof.

In testimony whereof I hereunto subscribe my name, at the city of Washington, this 4th day of June, A. D. 1906.

J. M. WRIGHT,
Marshal of the Supreme Court of the United States.

33 D 2—307—81

Came to hand at my office in Knoxville, Tenn., this the 7th day of June, 1906, and executed on the following named defendants, at time and place set opposite their names, by summoning them to appear before the United States Supreme Court in the city of Washington, D. C., on Monday, the 15th day of October, 1906, at 12 o'clock noon, and by leaving a copy of this writ with each of the said named defendants, to wit:

Joseph F. Shipp (sheriff), Chattanooga, June 8th, 1906. Dunlap, marshal.

Frank Jones (deputy sheriff), Chattanooga, June 8th, 1906. Dunlap, marshal.

Mathew Gallaway (deputy sheriff), Chattanooga, June 9th, 1906. Welch, D. M.

C. A. Baker (deputy sheriff), Chattanooga, June 9th, 1906.

T. B. Taylor (dept. sheriff), Chattanooga, June 8th. Dunlap, U. S. M., at Chattanooga.

Fred Frauley (dept. sheriff), June 8th. Dunlap, U. S. M., at Chattanooga.

Geo. Brown (dept. sheriff), June 9th. Gresham, D. M., at Chattanooga.

Jeremiah Gibson (dept. sheriff), June 9th. Gresham, D. M., at Chattanooga.

Marion Perkins (dept. sheriff), June 8th. Dunlap, U. S. M., at Chattanooga.

Jas. Clark (dept. sheriff), June 9th. Gresham, D. M., at Chattanooga.

Nick Nolan, June 8th. Welch, D. M., at Chattanooga.

" Cheeney " Warner, June 8th. Dunlap, U. M. S., at Chattanooga.

Luther Williams, June 8th. Dunlap, U. S. M., at Chattanooga.

Wm. Marquet, June 8th. Dunlap, U. S. M., at Chattanooga.

Wm. Beeler, June 8th. Dunlap, U. S. M., at Chattanooga.

Claud Powell, June 9th. Welch, D. M., at Chattanooga.

34 Chas. H. Powell, June 9th. Welch, D. M., at Chattanooga.

Bart Justice, June 8th. Dunlap U. S. M., at Chattanooga.

Johnnie Jones, June 9th. Welch, D. M., at Chattanooga.

A. J. Cartwright, June 8th. Welch, D. M., at Chattanooga.

R. T. Cartwright, June 8th. Welch, D. M., at Chattanooga.

Henry Padgett, June 8th. Welch, D. M., at Chattanooga.

Wm. May, June 9th. Welch, D. M., at Chattanooga.

Frank Ward, June 8th. Welch, D. M., at Chattanooga.

John Varnell, June 8th. Dunlap, U. S. M., at Chattanooga.

Alford Handman, June 9th. Gresham, D. M., at Chattanooga.

The defendant Paul Pool not to be found in my district; said to be in Mobile, Ala.

This July 26th, 1906.

(Signed) W. A. DUNLAP,
U. S. Marshal, E. Dist. of Tennessee.

36 Office of the marshal, Supreme Court of the United States, July 30, 1906.

Came to my hand as aforesaid and for the purpose of further serving the same, I, J. M. Wright, marshal of the Supreme Court of the United States, do hereby authorize and deputize Gilbert B. Deaus, United States marshal for the Southern District of Alabama, or any of his deputies, or anyone he as my deputy shall authorize, to serve the within rule to show cause on the parties named therein who have not heretofore been served, and especially the defendant Paul Pool, and make due return thereof.

In testimony whereof I hereunto subscribe my name, at the city of Washington, this 30th day of July, A. D. 1906.

J. M. WRIGHT,
Marshal of the Supreme Court of the United States.

MOBILE, ALABAMA,

Received in office August 3rd, 1906, and not being able, after diligent search, to find the within-named Paul Pool in this district, I return the original and copy of information and rule, case 26, Oct. term, 1906, Supreme Court United States this 27th day of August,

G. B. DEAUS,
U. S. Mar., So. Dist. of Alabama.

36 (Marshal's Docket No. 109.)

Office of the marshal, Supreme Court of the United States.

Came to my hand as aforesaid and for the purpose of further serving the same, I, J. M. Wright, marshal of the Supreme Court of the United States, do hereby authorize and deputize Eugene Nolte, United States marshal for the Western District of Texas, or Leo V. Youngworth, United States marshal for the Southern District of California, or any other United States marshal or deputy United States marshal or anyone they as my deputy shall authorize to serve the within rule to show cause on the parties named therein who have not heretofore been served, and especially the defendant Paul Pool, and make return hereof.

In testimony whereof I hereunto subscribe my name at the city of Washington this 1st day of September, A. D. 1906.

J. M. WRIGHT,
Marshal, Supreme Court of the United States.

37 SAN ANTONIO, TEXAS.

Came to hand Sep. 10, A. D. 1906, and not being able, after diligent search, to locate the within-named Paul Pool in the Western District of Texas, I return unexecuted on the said Paul Pool the original and copy of information case No. 26, October term, 1905, Supreme Court of the United States, this 15th day of Sept., A. D. 1906.

EUGENE NOLTE,
United States Marshal, Western District of Texas.
By J. D. DODSON,
Chief Deputy.

(Marshal's Doc. No. 2348.)

Office of the United States marshal, Southern District of California.

I hereby certify that I received the original information and order to show cause in the case entitled "The United States of America, complainants, vs. John F. Shipp and others, defendants," No. 26, pending in the Supreme Court of the United States, on the 18th day of September, 1906, for the special purpose of serving same on Paul Pool, a defendant named therein; that after due and dili-

1906.

gent search and enquiry I have been unable to find said Paul Pool in said Southern District of California; further, I have not been able to discover the whereabouts of the said Paul Pool. Therefore, I return said original information and order to show cause not executed as to said defendant Paul Pool.

Los Angeles, California, October ninth, A. D. 1906.

LEO V. YOUNGWORTH,
Marshal of the United States for the Southern District of California.
By H. T. CHRISTIAN,
Chief Office Deputy.

38 Came to my hand as aforesaid and returned executed by service on all the defendants herein, except Paul Pool, who, after diligent search, as shown by the certificates herewith, could not be found.

Witness my hand this 15th day of October, A. D. 1906.

J. M. WRIGHT,
Marshal Supreme Court of the United States.

And thereafter, on information of the supposed whereabouts of said Paul Pool, these papers were again sent to the United States marshal for the southern district of California for the purpose of further effort to secure service on said Pool, and on Sept. 23, 1907, the said marshal made further return herein, as witnessed by his return of said date attached hereto.

J. M. WRIGHT,
Marshal Supreme Court of the United States.

Office of the U. S. Marshal, Southern Dist. of Cal.

I hereby certify that I received the original information and order to show cause in the case entitled The United States of America, complainants, vs. John F. Shipp and others, defendants, No. 26, pending in the Supreme Court of the United States on the 18th day of September, 1906, for the special purpose of serving same on Paul Pool, a defendant named therein. After due and diligent search and enquiry I have been unable to find said Paul Pool in said southern district of California; further, I have not been able to discover the whereabouts of said Paul Pool. Therefore I return said original information and order to show cause not executed as to said defendant Paul Pool. Los Angeles, California, Sept. 23, 1907.

LEO V. YOUNGWORTH,
Marshal of the U. S. for the Southern Dist. of California.

39 (Endorsed:) Supreme Court, U. S., October term, 1906. No. 12. Original. The United States, complainant, vs. John F. Shipp et al. Proof of service of rule on all of the defendants except Paul Pool. Filed Oct. 15, 1906.

40 And afterwards, to wit, on the 15th day of October, A. D. 1906, the following entry appears of record, viz:

41 No. 12. Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.

On motion of Mr. Judson Harmon, Mr. Lewis Shepherd, Mr. G. W. Chamlee, Mr. Samuel P. Maddox, and Mr. Joe V. Williams, of counsel, leave is hereby granted to file answers of the defendants herein.

OCTOBER 15, 1906.

42 And on the same day, to wit, on the 15th day of October, A. D. 1906, answers were filed in the words and figures following, viz:

43 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.
October term, 1906.
No. 12. Original.

Answer of Joseph F. Shipp and others to rule to show cause.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendant.

44 Supreme Court of the United States.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.
October term, 1905. No. 26. Original.

To the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now come Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. D. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, defendants, and, admitting their official characters as alleged in the information herein, but protesting that they have each and all never nor in anywise been lacking in obedience to the authority and respect for the dignity of this honorable court, for cause why the prayer of said information should not be granted as against them respectfully show:

I.

They first respectfully submit whether they or any of them ought to be interrupted in the discharge of their duties under the laws of Tennessee and put to trouble and expense by being required to answer before this honorable court the charges made against them in the information, because they are advised and believe, and so aver, that said charges, even if true, would be, and ought to be treated as,

45 crimes under the laws of Tennessee and contempt of the judicial authority thereof only, and not offenses against the authority or dignity of this honorable court, by reason of the following facts which are each and all established by the record herein:

The petition filed in the Circuit Court of the United States by Ed. Johnson for a writ of habeas corpus, mentioned in the information and, with the complete record of the proceedings thereon, made part of said information by reference, did not in any way or in any respect whatever allege a lack of jurisdiction in the court of the State of Tennessee in which said Johnson was convicted, either to try him on said charge or to adjudge the sentence imposed on him under which he was in custody of said Shipp, as sheriff, as stated in the information.

It is not averred in said petition that the alleged denials of rights secured to said Johnson by the Constitution of the United States, or any one of such denials, were made by virtue or under color of the constitution, laws, or rules of judicial practice of the State of Tennessee. On the contrary it appears from said petition that each and every of such alleged denials of right was and is charged as being due to the individual action of officials and other citizens of said State in violation of their duties under the constitution and laws thereof.

And these defendants are advised and believe, and so aver, that according to the repeated and uniform decisions of this honorable court the Circuit Court of the United States, in which said petition for habeas corpus was filed, had no right or authority whatever to inquire into any of the matters alleged therein, but that the same were cognizable only by the Supreme Court of Tennessee, which, as shown by the record herein, had full power and authority under the constitution and laws of said State, properly to deal with and dispose of each and every complaint made in said petition with reference to the indictment, trial, and sentence of said Johnson. So that

46 said petition for a writ of habeas corpus was, on the face thereof, merely an attempt on the part of said Johnson to obtain from the Circuit Court of the United States instead of from the Supreme Court of Tennessee a review of said proceedings for alleged errors therein.

Said record, which contains all the evidence offered by either party in said Circuit Court of the United States, shows that each and all the allegations of said petition for a writ of habeas corpus concerning the denial of rights to said Johnson by said criminal court of Tennessee, were both false and unfounded.

There was no proof whatever that he was denied the aid of counsel; on the contrary it appears that, as he was unable to employ counsel, said criminal court appointed three lawyers of high standing to conduct his defense, and that they did so, as he himself admits, with ability, fidelity, and zeal.

There was no proof whatever that said Johnson ever made or had any ground for objection to the selection or character of the juries

which indicted and tried him, or of either of them. On the contrary it appears that his counsel forbore to make such objection on learning the facts.

There was no proof whatever that his attorneys were denied the right to apply for a change of venue or a continuance. On the contrary, it appears that they forbore to make application therefor, and that the time for said trial, as originally fixed by the court, was postponed by the consent of counsel for both parties, and that the trial was had at the time so agreed on.

There was no evidence whatever that his trial was not public, or that any of his relatives or friends were prevented from attending the same. On the contrary the proof shows that precautions were merely taken, at the request of his own counsel, to prevent the attendance of disorderly persons only; that such precautions were withdrawn when the first day of the trial showed them to be needless, and that during each and all of the three days the trial lasted there was a large attendance of the public.

47 There was no proof whatever that he was compelled to give evidence against himself. On the contrary, it appears that he rose, without any objection by himself or his counsel, when requested by a juror, in order to afford the girl he was charged with assaulting a better view; and that the exclamation of a juror, which occurred after the testimony had all been given, was treated by all, including the prisoner and his counsel, as the effect of the proof on an emotional nature, not as evidence that the juror was not impartial when accepted and sworn, and consequently nothing was said or done by the prisoner's counsel with reference to such occurrence, although they had full opportunity.

There was no proof whatever that when new counsel took up his case after his conviction they were denied the right to file a motion for a new trial, or to present a bill of exceptions, or to appeal to the Supreme Court of Tennessee. On the contrary it appears that no motion for a new trial was presented until after the time allowed for such motions by the reasonable and long-established rules and practice of the court had expired, although said counsel had ample time to prepare and file the same before such expiration; and that said counsel took no steps whatever towards preparing or presenting a bill of exceptions or taking an appeal, although the court remained in session for an entire week after the conviction of said Johnson and for five consecutive days after said counsel first appeared.

By reason of the foregoing facts appearing undisputed on the record herein, these defendants are advised and believe, and so aver, that said petition for a writ of habeas corpus was not an appeal in good faith to the power and authority vested by the Constitution and laws of the United States in said Circuit Court; that said Circuit Court of the United States had no right or authority to entertain said petition and thereby interfere with the proceedings had and taken by the judicial authority of the State of Tennessee; and

48 that consequently the order of said Circuit Court dismissing

said petition was not appealable to this honorable court under the decisions and rules of practice thereof and the Constitution and laws of the United States.

They, therefore, humbly pray the consideration and judgment of the court in the premises and that said information be dismissed as against them.

II.

If and in case the court shall find and decide the foregoing cause shown to be insufficient, then these defendants, as further cause why they and each of them should not be punished as for contempt of this honorable court, as prayed in said information, severally and collectively plead and say, that the charges made against them and each of them respectively in said information are not true, and to each and every of said charges, that they are not guilty.

Wherefore these defendants each and all most humbly pray that the rule herein issued against them be discharged.

JOSEPH F. SHIPP.
FRANK JONES.
MATT L. GALLOWAY.
C. A. BAKER.
THOMAS B. TAYLOR.
GEORGE W. BROWN.
JEREMIAH GIBSON.
FRED FAULEY.
MARION PERKINS.
JOSEPH C. CLARK.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendants.

49 STATE OF TENNESSEE,
County of Hamilton, ss:

Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. D. Taylor, Fred Fauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, the defendants above named, being first duly sworn, each severally deposes and says that all and singular the statements made in the foregoing plea and answer are true, and that such thereof as are made on informtion and belief he verily believes to be true.

JOSEPH F. SHIPP.
FRANK JONES.
MATT L. GALLOWAY.
C. A. BAKER.
THOMAS B. TAYLOR.
GEORGE W. BROWN.
JEREMIAH GIBSON.
FRED FAULEY.
MARION PERKINS.
JOSEPH C. CLARK.

Sworn to before me and subscribed in my presence this 12th day of October, A. D. 1906.

W. F. CHAMLEE,
Notary Public.

[NOTARIAL SEAL.]

[Endorsed:] Supreme Court U. S., October term, 1906. Term No. 12, original. The United States of America, compl't, vs. John F. Shipp et al. Answer of John F. Shipp and other defendants showing cause. Judson Harmon, Clift & Cooke, Robert Pritchard, attorneys for defendants. Filed Oct. 15, 1906.

50 In the Supreme Court of the United States.

October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Nick Nolan, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

51 THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Nick Nolan to the information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this honorable court, issued May 28th, 1906.

By way of answer to the information filed by the Attorney General and the rule granted by the honorable court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said information or any or either of them,

or with any other person or persons to break and enter the jail
52 of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know beforehand that a mob was to be formed to lynch said Ed. Johnson, and he did not in anyway aid, abet, counsel, or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged that the mob attacked the jail at or about the hour of nine o'clock p. m., March 19, 1906.

At that time the defendant was at his place of business on Whiteside street, in South Chattanooga, about two miles from the Hamilton County jail. About 9.30 o'clock p. m. of said date he left his place of business and went to the saloon of John Nolan, in South Chattanooga, on Whiteside street. He remained at this saloon until 10 o'clock p. m., at which time the saloon was closed in pursuance of an ordinance of the city of Chattanooga requiring all saloons to close at 10 o'clock p. m. After the said saloon closed, defendant remained there or thereabouts with the proprietor, John Nolan, discussing a question of politics until about 10.30 o'clock p. m., at which time he went to his home on Aiken street, in South Chattanooga, where he remained until next morning.

This defendant denies that he ever at any time did any act to
53 show contempt and disregard for the order of this honorable court or to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

And now having fully answered the information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will every pray.

NICK NOLAN.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared Nick Nolan and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

NICK NOLAN.

Subscribed and sworn to before me this 8th day of October, 1906.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

54 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12, original. The United States of America, complainants, vs. John F. Shipp et al. Answer of Nick Nolan. Filed Oct. 15, 1906.

55 In the Supreme Court of the United States. No. 12, original. October term, 1906.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP, PAUL WERNER, who is named in the information as "Sheenie Werner," et als., defendants.

Answer of Paul Werner to the rule to show cause.

CUMMINGS & CHAMLEE,
Attorneys for Defendant.

56 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP, PAUL WERNER, who is named in the information as "Sheenie" Werner et als., defendants.

Answer of Paul Werner to the rule to show cause.

And now comes the defendant, Paul Werner, who is referred to in the information as "Sheenie" Werner, and for answer to the rule herein to show cause why he should not be attached and punished for contempt of this honorable court, says:

1st. That he is advised that the Supreme Court of the United States of America had no jurisdiction of the cause of Ed Johnson, complainant, vs. The State of Tennessee, and that all proceedings had by the United States Supreme Court in the matter of Ed Johnson, complainant, vs. The State of Tennessee were null and void and illegal.

2d. That he is advised that the original petition for a writ of habeas corpus that was sued out by the said Ed Johnson, complainant, vs. The State of Tennessee, was addressed to the United States
57 District or Circuit Court at Chattanooga, Tennessee, and that the original petition was presented to and tried before the Honorable C. D. Clark, one of the judges of the United States court, not at Chattanooga, Tennessee, but at Knoxville, Tennessee, at cham-

bers, and he is advised that from the dismissal of said petition by the Hon. C. D. Clark, judge, etc., for the writ of habeas corpus tried at chambers, that there is no appeal and that the appeal that the said Ed Johnson undertook to perfect was in law ineffective and that this honorable court did not acquire jurisdiction of the case, because a transcript was presented and authorized to be filed in this honorable court.

3d. Not waiving any of his rights contained in the pleas for a want of jurisdiction by this honorable court in this case, but pleading and relying upon the same as a full and complete defense of this case, this defendant, Paul Werner, comes and for answer to the rule in this cause, and answering so much and such parts of said information as he is informed is material for him to answer, and for answer thereto says:

That he denies that he aided or assisted in the lynching of the said Ed Johnson, or that he had anything to do with encouraging, promoting, or comforting the lynchers while they were preparing or executing their plans or lynching Ed Johnson. He says that he did not know nor hear of any effort being made to lynch the said Ed Johnson until the next morning after the lynching had occurred. That at the hour that Johnson was lynched that he was at his home, 613 East Fifth street, in the city of Chattanooga, Tennessee, and that he was not at the county jail; that he did not see Ed Johnson on that night; did not witness the lynching at the county bridge; had nothing in the world to do with it; and knew absolutely nothing about it.

4th. He further says that he denies each and every allegation contained in the information that accuses or charges him with any complicity whatever with the said Ed Johnson or with conspiring
58 or confederating with the sheriff of said county of Hamilton, or conspiring, confederating, or agreeing with any other person to aid or assist in the breaking or entering of the county jail of Hamilton County, Tennessee, for the purpose of taking therefrom the body of the said Ed Johnson to lynch and murder him for any purpose whatsoever. He denies that he was a party to any compact, confederation, or agreement to do any act that would be a contempt of this honorable court or to show any contempt for this honorable court or to prevent this honorable court from hearing and determining the appeal of the said Ed Johnson. He further says that he is not guilty of the charge made against him in the information; that he denies absolutely and in toto all knowledge or connection of any conspiracy to lynch Ed Johnson and that he has not committed himself, nor directed nor encouraged any other person to commit any act that would be a contempt of this honorable court, or to show its disrespect or disregard for the orders of this honorable court or to prevent this honorable court from hearing and determining the appeal of the said Ed. Johnson.

He further says that the accusation made against him in this cause does him a great and serious wrong and that it is not true, and that if the opportunity is afforded him to do so he will undertake to prove by witnesses who know the facts that he was at his home on the night and at the very hour that Johnson was lynched and that he could not have been a party to that transaction.

Wherefore this respondent says that he denies each and every allegation made against him in this cause.

And now, having fully answered, he prays to be dismissed from the requirements of said rule to show cause why he should not be punished for a contempt of this honorable court.

W. H. CUMMINGS,
G. W. CHAMBLEE,
Attorneys for Defendant.

59 STATE OF TENNESSEE,
County of Hamilton.

Paul Werner, who is named in the information as "Sheenie" Werner, says that he is the respondent in the above styled cause and that the facts set out in the foregoing answer are true as he verily believes.

PAUL WERNER.

Sworn to and subscribed before me and in my presence, this 9th day of October, 1906.

R. M. WATKINS,
Deputy Clerk U. S. Circuit Court.

60 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12, original. The United States of America, complainant, vs. John F. Shipp et al. Answer of Paul Werner. Filed Oct. 15, 1906.

61 In the Supreme Court of the United States.

October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP, LUTHER WILLIAMS, et als., defendants.

Answer of Luther Williams to the rule to show cause.

CUMMINGS & CHAMLEE,
Attorneys for Defendant.

62 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainants, *vs.* JOHN F. SHIPP, LUTHER WILLIAMS, ET als., defendants.	October term, 1906. No. 26.

Answer of Luther Williams to the rule to show cause.

And now comes the defendant, Luther Williams, and for answer to the rule herein to show cause why he should not be attached and punished for contempt of this honorable court, says:

1st. That he is advised that the Supreme Court of the United States of America had no jurisdiction of the cause of Ed Johnson, complainant, vs. The State of Tennessee, and that all proceedings had by the United States Supreme Court in the matter of Ed Johnson, complainant, vs. The State of Tennessee were null and void and illegal.

2d. That the original petition for a writ of habeas corpus that was sued out by the said Ed Johnson, complainant, against the State of Tennessee was, as this respondent is advised, addressed to the
63 United States District Court at Chattanooga, Tennessee, and that the original proceedings were presented and tried before the Hon. C. D. Clark, judge of the United States court, not at Chattanooga, Tennessee, but at Knoxville, Tennessee, at chambers, and he is advised that from the dismissal of said petition for the writ of habeas corpus held at chambers that there is no appeal and that the appeal that the said Ed Johnson undertook to perfect was, in law, ineffective and that this honorable court did not acquire jurisdiction of the case, because a transcript was presented and filed in this honorable court.

3d. He is advised that Ed Johnson was not a United States prisoner, but that he was a state prisoner, and under the charge of state officials, and that in order to make him a United States prisoner a different proceeding than that which was had in this cause would be required to make said proceedings valid under the law.

4th. That if Ed Johnson was, as a matter of law, a United States prisoner at the time that he was lynched, that no notice of that fact had ever been conveyed to this respondent by any person whomsoever.

5th. That under the law of the United States and the facts of this case he is advised that this honorable court had no jurisdiction to proceed with said cause of Ed Johnson, appellant, vs. The State of Tennessee, under the facts as alleged in Johnson's petition, and that the case would, upon motion or demurrer, had to have been dismissed or stricken from the docket according to the rule laid down in the case of Caleb Powers vs. The Commonwealth of Kentucky.

6th. Not waiving any of his rights as stated in the foregoing
64 pleas for want of jurisdiction by this honorable court in this

case, but pleading and relying upon the same as a full and complete defense to this case, this defendant, Luther Williams, now comes and for further answer to the rule in this cause, and answering so much and such parts of said information as he is informed is material and proper for him to answer, says:

That he was not an officer and that he did not have Ed Johnson in his charge, care, or custody at any time or place whatsoever.

He says that he is a business man and runs a saloon at No. 630 Market street, in the city of Chattanooga, Tennessee, and that his place of business is on the east side of Market street, between Sixth street and Seventh street; and that the county jail of Hamilton County, Tennessee, is on the west side of Walnut street, between Sixth and Seventh streets, and that between the county jail and his place of business there is one cross street.

He further says that the first notice that he had of a mob intending to assemble at the jail or were assembling at the jail in Chattanooga on the night of March 19, 1906, was that about 9.30 to 10 o'clock p. m., some one came in his saloon and called attention of those present there that a mob had assembled at the county jail for the purpose of lynching a negro. Inquiry being made, it developed that it was Ed Johnson.

Under a law of the city of Chattanooga, all saloons were required to close at ten o'clock p. m. every night except Saturday night, and then at eleven o'clock on Saturday night. March 19, 1906, was on Monday night, as affiant now remembers, and it was nearly closing time when he received his first information about a mob at the county jail. He knew that if trouble was about to occur in that neighborhood that all saloons ought to close in order to prevent mem-
65 bers of the mob becoming intoxicated and committing violence, and for this reason he immediately closed his saloon and in a few minutes went up to the county jail, which was a distance of about 200 yards, and when he got there a mob was in control of the jail. A large crowd of men had their faces covered and were disguised so that no one could tell who they were and were proceeding to break down the doors of the jail, and in a very short time after his arrival Johnson was taken out and carried to the county bridge and lynched.

This respondent saw the lynching; was on the bridge where he could witness the entire trouble as a spectator with hundreds of other people who were on the bridge at the time.

He is well known to a number of people who were at his saloon on the night that Johnson was lynched and who were about the county jail as spectators at the time, and he was not disguised; made no effort to conceal his own identity; he had no part whatever in aiding or counseling the mob to lynch Ed Johnson and had nothing in the world to do with the entire trouble. Just like people go to see a great fire or anything else of excitement that is about to happen, he went up to the jail to see what the mob was doing and what was going to happen to Johnson.

He denies that he was a member of said mob or that he had anything to do either by word or action, aiding, or abetting in the alleged

lynching, or that he counseled or conspired or confederated with any person or persons whomsoever to lynch the said Ed Johnson.

He denies that he endeavored or conspired or confederated or agreed together or formed a combination with any person to break or enter the county jail or to lynch the said Ed Johnson or to do any other act to prevent this honorable court from hearing and de-
66 termining the appeal of the said Ed Johnson, or to show any contempt for this honorable court, and he denies each and every allegation made in the information against him in this cause, that by implication could be construed to mean that he had aided or consented to the lynching of the said Ed Johnson, or committed any other act or conspired, confederated, or agreed to commit any other act, or agreed for any other person to commit any act towards the lynching of the said Ed Johnson, or to break or enter the county jail of Hamilton County, Tennessee, or to prevent this honorable court from hearing the appeal of the said Ed Johnson, or to show his contempt for the orders of this honorable court, or to do any other act that would be disrespectful of this honorable court.

He says that he is not a lawyer, does not know what it takes to vest this honorable court with jurisdiction of this case, but makes the plea as to the jurisdiction upon the advice of his lawyers in this cause; but independent of his pleadings that he can prove that he had no part in the lynching of Ed Johnson, and that on the merits of his case he stands ready to show to this honorable court that he is entirely innocent of the charge made against him, and that if an opportunity is afforded him he will be pleased to present his evidence to sustain his contention as made in his answer.

He says that after Ed Johnson was lynched that the great crowd that had congregated at the bridge began to disperse and that he went to his home, where he spent the remainder of the night; that this was between ten and eleven o'clock, as he believes.

Wherefore this respondent says that he denies each and every allegation made against him in this cause.

67 And now having fully answered, he prays to be dismissed from the requirements of said rule to show cause why he should not be punished for a contempt of this honorable court.

W. H. CUMMINGS,
G. W. CHAMLEE,
Attorneys for Defendant.

STATE OF TENNESSEE,
County of Hamilton.

Luther Williams, being duly sworn, says that the facts set out in the foregoing answer are true as he verily believes.

LUTHER WILLIAMS.

Sworn to and subscribed before me and in my presence this 9th day of October, 1906.

R. M. WATKINS,
Deputy Clerk U. S. Court.

68 (Endorsed:) In the Supreme Court of the United States, October term, 1906. No. 12. Original. The United States of America, complainant, vs. John F. Shipp et al. Answer of Luther Williams. Filed Oct. 15, 1906.

69 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Separate answer of William Marquette.

JOE V. WILLIAMS,
Attorney for Defendant.

70 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

October term, 1906. No. 12. Original.

The separate answer of William Marquette to the information filed against him and others in the above cause.

The defendant, for answer to such parts and so much of said information as he is advised it is necessary or material for him to answer, says:

I.

That on information and belief he admits that on or about the 11th day of February, 1906, one Ed Johnson, a citizen of the United States and a resident and citizen of the State of Tennessee, and a colored person of African descent, was convicted of the crime of rape in the Criminal Court of Hamilton County, and said court thereupon sentenced the said Ed Johnson to suffer the penalty of death, as alleged in paragraph 1 of said information.

II.

That on information and belief he admits that a petition for a writ of habeas corpus was duly presented to the United
71 States Circuit Court for the Northern Division of the Eastern District of Tennessee, but defendant does not know whether

it was alleged in said petition that the said Ed Johnson had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution. This defendant never saw said petition, and, while the same or parts thereof may have been published in the newspapers, he has no recollection as to the allegations the same contained.

On information and belief it is admitted that on or about the 10th day of March, 1906, the application of the said Ed Johnson for a writ of habeas corpus came on for hearing before the said United States Circuit Court for the Eastern District of Tennessee upon the petition, return, answer, and replication, and upon the testimony of witnesses given orally in open court, and after argument of counsel, the said Circuit Court ordered that said petition be dismissed, and that the writ of habeas corpus prayed for in said petition be denied. The defendant was not present on said hearing, and only knows as to what occurred by newspaper reports. Defendant does not remember of having seen any publication to the effect that the said Circuit Court of the United States remanded the petitioner to the custody of the sheriff of Hamilton County, in the State of Tennessee, to be detained by the said sheriff in his custody for the period of ten days in which to enable said petitioner to prosecute an appeal from said order, should he be so advised and should an appeal lie from said order, and in default of the prosecution of an appeal within said time to be then further proceeded with by the Court of the State of Tennessee under its sentence. While defendant has no recollection on this subject, he is advised that such order was in substance so made by said court.

On information and belief it is admitted that on or about the 17th day of March, 1906, an application was duly presented by the
72 said Ed Johnson to the Hon. John M. Harlan, an Associate Justice of the Supreme Court of the United States, assigned to the Sixth Circuit, asking that an appeal be allowed to the Supreme Court of the United States from the judgment rendered in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee on March 10th, 1906, denying his, the said Ed Johnson's application for a writ of habeas corpus, and which said appeal was on the same day duly allowed by the said Mr. Justice Harlan; that thereafter, to wit, on the 19th day of March, 1906, a motion was made in the Supreme Court of the United States for an order allowing an appeal to the Supreme Court of the United States from the judgment of the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee rendered on the 10th day of March, 1906, denying his, the said Ed Johnson's application, for a writ of habeas corpus, which motion was thereupon granted by the said Supreme Court. This admission is made solely upon the information received by the defendant after the lynching of the said Ed Johnson. That at the time of the lynching of the said

Ed Johnson, defendant did not know that an appeal had been granted by Mr. Justice Harlan of the said Supreme Court, or by said Supreme Court, and this information did not come to him until he saw a publication to this effect in the Chattanooga Times the morning after the lynching of the said Ed Johnson. Defendant is now advised that publication was made to that effect in the Chattanooga Evening News on the evening before the lynching of said Ed Johnson, but for some reason defendant did not see said paper on said evening and had no information on the subject referred to until the following morning, as before stated. Defendant at the time of the lynching of the said Ed Johnson did not know what order the said Supreme Court of the United States had made and entered in reference to the petition of the said Ed Johnson. The defendant never had any information on this subject until a copy of the information filed in his cause was served upon him.

73

III.

Defendant did not, at the time of the lynching of the said Ed Johnson, know what notice had been given by the Clerk of the Supreme Court of the United States to defendant John F. Shipp, the sheriff of Hamilton County, as to the making and entering of said order in relation to the petition of the said Ed Johnson. As before stated, defendant did not see the evening paper on the day of the lynching of the said Ed Johnson, and, consequently, did not see what said paper contained in reference thereto, and this defendant had no other information on the subject. Defendant did see the Chattanooga Times on the morning after the lynching of the said Ed Johnson, and whatever said paper may have contained on this subject he no doubt read, but he has no distinct recollection as to what said paper contained on this subject, and, in fact, the first definite information this defendant received on the subject of the appeal to the Supreme Court of the United States and the order made in relation thereto, and the notice given to the said John F. Shipp, was when a copy of the information filed in this cause was served upon the defendant. Defendant is not a lawyer, and had taken no particular interest in said matter, and did not know, except in a most general way, what had been done in relation to the said Ed Johnson case.

IV.

On information and belief it is admitted that said John F. Shipp, at the time mentioned in said information, was the duly elected, qualified, and acting sheriff of Hamilton County, in the State of Tennessee, and as such sheriff had and exercised full charge and control of the county jail, in the city of Chattanooga, in said county, and was the legal custodian under the laws of the State of Tennessee of all persons duly committed in said county, under the laws of said State, to confinement and imprisonment within said jail. Defendant has no personal knowledge as to who were the deputy sheriffs of said

74 county at said time, but on information and belief it is admitted

that Matthew Galloway, C. A. Baker, Fred Frawley, and probably others, named in said information, were deputy sheriffs at the time aforesaid. But defendant has no definite information on this subject, and his only knowledge on the subject is hearsay. Defendant does not know what information the said sheriff and his deputies, or any of them, may have received before or after the hour of 6 o'clock on the evening of the 19th day of March, 1906, as to the action taken by the said Supreme Court of the United States with respect to the appeal of the said Ed Johnson. Defendant never at any time had any talk with the said sheriff or any of his deputies on this subject, and has no information directly or indirectly in relation thereto. Defendant does not know by whose orders the said Ed Johnson was held and restrained of his liberty in the jail of said county at the time aforesaid, except his general information to the effect that the said Ed Johnson had previously been convicted of the crime of rape and was being held on such charge. Whether said Ed Johnson at said time was being held and confined by virtue of an order made by the Supreme Court of the United States, he does not know, and did not at the time know, this defendant having no information on the subject, except as hereinbefore set out.

Defendant does not know what information, if any, said sheriff and his deputies received to the effect that an attempt would be made on the evening of the said 19th day of March, or early in the morning of the following day, by a mob composed of a large number of armed men to force and enter into the said county jail for the purpose of taking therefrom by violence and unlawful means the said Ed Johnson and putting him to death. If said sheriff and his deputies, or any of them, had any such knowledge on the subject, it is wholly unknown to this defendant. As to what the said sheriff may have done with respect to withdrawing from said jail early in the evening of the day aforesaid the usual and customary guard, and leaving in charge thereof only the night jailer, to wit, Deputy Sheriff Jeremiah Gibson,

75 defendant is not advised, and did not at the time have, and has not now, any information on the subject, except what is contained in the information filed in this cause. Said defendant never had any conversation with said sheriff, or any of his deputies, in relation thereto, and he is wholly without personal information on the subject. If the said sheriff and his deputies, or any of them, entertained a purpose or disposition at said time to in any way assist a mob in carrying out its unlawful design and purpose to lynch the said Ed Johnson, this is wholly unknown to this defendant. At said time defendant did not know that any person or persons contemplated the mobbing or lynching of the said Ed Johnson, and the first information he had on the subject was at, or about, the time the lynching occurred, as will be hereafter more fully shown.

V.

It is most positively denied that this defendant wilfully, unlawfully, and wrongfully combined, conspired, confederated, and agreed with the said John F. Shipp and the other persons named in said

information, or any of them, or with any other person or persons, to break and enter the said county jail of Hamilton County for the purpose of taking therefrom the person of the said Ed Johnson to lynch and murder him, with the intent then and there had and entertained by this defendant, or said other defendants, or any of them, to show their contempt and disregard for the order of this honorable court made, entered, issued, and published in relation to the said Ed Johnson's appeal, and for the purpose of preventing this honorable court from hearing the appeal of the said Johnson allowed by said court, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States. Defendant denies that he combined, conspired, confederated, or agreed together with said other defendants, or any of them, for the purpose aforesaid, or otherwise. Defendant at no time, either on the day or the night of said lynching, or at any other time, in any manner, shape, or form, combined or confederated with said defendants, or either of
76 them, to do and perform the acts alleged in said information or for the purposes therein alleged. This defendant had nothing whatever to do with the mobbing or lynching of the said Ed Johnson, did not know that his lynching was contemplated until at or about the time he was being taken from said jail by a mob for such purpose. Defendant was not at said jail at said time, and does not know who were present or participated in said mob.

On information and belief it is admitted that on the evening of the said 19th day of March, 1906, a large number of persons did assemble in the vicinity of said county jail and that said Ed Johnson was unlawfully and wrongfully taken therefrom with force and violence, against his will, and hanged by the neck until he was dead. As to what said sheriff or said deputies, or any of them, had to do with said lynching, if anything, this defendant is not advised, and this defendant is wholly without information as to what particular persons composed said mob; he only knowing that he was not a participant in said mob and was not present at said time.

VI.

This defendant, further answering said information, states and shows to this honorable court, in detail, the following facts:

That on the day and the night of the lynching of the said Ed Johnson he was in a delicate state of health, and was at said time and had been for more than a month previous thereto, suffering from asthma; that previous to said time Dr. Cooper Holtzclaw had been treating him, the said defendant, for said disease, and about the hour of 7.30 o'clock or 8 o'clock on said evening he went to the office of the said Dr. Holtzclaw, at 213 East Eighth street, in the city of Chattanooga, for the purpose of procuring treatment for same; that on defendant's arrival at said office he found the said Dr. Holtzclaw absent making a call, and he thereupon entered into conversation with Drs.

M. L. Crum and E. C. Johnson, who were then in said office and
77 continued to so converse with them until the arrival of the said Dr. Holtzclaw, at or about the hour of 9 o'clock. On the arrival of the said Dr. Holtzclaw he remarked to the defendant that he had had no supper and desired the said defendant to wait until he ate his supper. This was accordingly done, and after said Holtzclaw finished his meal he called the defendant into his, the said Dr. Holtzclaw's private office, where they conferred together some fifteen or twenty minutes. After such consultation with the said Dr. Holtzclaw, he advised the defendant to have two certain prescriptions refilled, and for this purpose the said defendant, at or about the hour of 9 o'clock, left the office of the said Dr. Holtzclaw and went to the drug store of Robert J. Miller, at 121 West Ninth street, where he had said prescriptions refilled. That after procuring the said prescriptions, said defendant started to his home, and in passing the restaurant of one W. D. Bowers, at 30 West Ninth street, defendant stopped and bought of the said W. D. Bowers 10 cents worth of granulated sugar for the purpose of using the same in making a hot lemonade for himself on his arrival home. On leaving said restaurant he again started towards his home, and remembering that he desired to purchase some witch hazel, he stopped at Miller's pharmacy, at the corner of Eighth street and Georgia avenue, and ordered and procured the same of one H. M. Allen, a clerk in said pharmacy. While waiting for the delivery of said witch hazel to him, he, the defendant, ordered a glass of coco cola at the fountain of said pharmacy, and was in the act of drinking the same when one Mr. Charles Karsten, an employee of the Chattanooga Times, came in and also ordered a glass of coco cola, and immediately upon so doing, said Karsten began telling this defendant that a report had reached the Times office to the effect that a mob had broken into the county jail and had taken the said Ed Johnson to the county bridge to hang him. This was about 10 o'clock. About this time the said witch hazel was delivered to defendant, and he walked out of said pharmacy to the curb of the street with the said Karsten, where they engaged in conversation for about ten minutes. The said de-
78 fendant then parted with the said Charles Karsten and went to the boarding house of himself and wife at 715½ Walnut street, said place being only about 150 feet from the said Miller pharmacy. On arriving home the said defendant took a dose of the medicine that he had procured at the drug store aforesaid, and as a consequence thereof, in some ten or fifteen minutes thereafter, he became very sick at the stomach and went to the toilet to vomit, which toilet is on the third floor of the said boarding house, the room of the said defendant being on the second floor. The said defendant remained in said toilet some thirty minutes, when one Robert S. Mastin, a young man boarding at the same place, passed said toilet and knocked on a door nearby, at the same time calling to some gentleman, whose name defendant does not now remember, to get up, that he had some-

thing to tell him, and after said gentleman answered, said Robert S. Mastin told said gentleman that he, the said Robert Mastin, had heard that the said Ed Johnson had been hanged on the county bridge. The defendant, being still in said toilet, called to the said Robert S. Mastin and had some conversation with him in relation to said hanging. This was about the hour of 11 o'clock. Thereupon the defendant went to his room, where he spent a sleepless night on account of his said asthmatic trouble. That on the following morning, after reading an account of the lynching in the Chattanooga Times, and of the damage done to the jail by said mob, the defendant, at about the hour of 8 o'clock, went to said jail, which is only a short distance from his said boarding-house, for the purpose of seeing the condition of the jail, and on his arrival there he had a curiosity to see the cell or place from where the said Ed Johnson had been taken the night previous, and at said time there were several other persons present in addition to the defendant, and permission was asked of Mr. F. A. Frawley, the deputy sheriff then in charge, to go to see the place from which the said Johnson had been taken, which permission was granted. Thereupon Mr. J. G. Richardson, another deputy sheriff, was requested to show the defendant and some five or six other persons through the damaged quarters and cell occupied by the said Ed Johnson on the night previous. The said
79 defendant, and said other persons, then went with the said J. G. Richardson to said place, and said cell was then entered by said defendant and said other persons, or some of them, and after so entering, some of the parties commenced to pick up different articles inside of said cell, or room, and as defendant was leaving said cell, or room, some one asked him if he had any of the articles, to which he replied that he did not. Thereupon some boy of about the age of fifteen or sixteen years, whose name was then and still is unknown to the defendant, handed to this defendant two letters addressed to the said Ed Johnson, which letters the said defendant put in his pocket. The defendant then left the said jail and went to his place of business, at 211 West Eighth street, and after arriving at his said place of business, which is but a short distance from the undertaking establishment where the body of the said Ed Johnson was, he, the said defendant, went to said undertaking establishment and viewed the body of the said Ed Johnson; and this defendant says that this was the first and only time that he ever saw Ed Johnson while in life, or after his death. After viewing said body, the defendant returned to his place of business, and while standing in the front door thereof, Mr. H. D. Rider, a building contractor in the city of Chattanooga, came by and entered into a conversation with defendant in relation to the lynching of the said Ed Johnson; that in said conversation the defendant told the said Rider of the visit of this defendant to the jail, and showed the said Rider the letters said boy had given him while at said jail. The defendant then and there gave to the said Rider one of said letters, which he took away with

him, and the other was kept and retained by said defendant for some time thereafter.

The defendant says that out of this circumstance, probably, grew the suspicion that he, the defendant, had something to do with said lynching. But defendant again denies that he had any connection whatever with said lynching, but says he was at other and different places during and at the time the said Ed Johnson was being lynched, and further says that he did not know positively that the said
80 Ed Johnson had been lynched until he saw an account thereof in the Chattanooga Times on the following morning.

This defendant did not before said lynching aid, counsel, or in anywise advise any person or persons to lynch the said Ed Johnson, and this defendant did not then, and has not since, in anywise approved the act of said mob in lynching the said Ed Johnson.

Defendant is advised that said mob first made an attack on said jail for the purpose of lynching the said Johnson at or about the hour of 9 o'clock on the said 19th day of March, 1906, and that at or about the hour of 10 o'clock on said night they took the said Ed Johnson from said jail and hung him on the county bridge nearly.

The defendant files herewith, and as a part hereof, several affidavits showing the whereabouts of said defendant at and during the time of said lynching; said affidavits being marked Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," and "J." The affidavit of Dr. Holtzclaw is not herewith presented, for the reason that he is now, and has been for some time past, absent from the city.

The defendant, further answering, shows to the court that he does now, and has always heretofore, entertained the highest regard and admiration for this honorable court, and that he did not, with respect to the said Ed Johnson lynching, or otherwise, directly or indirectly, show his contempt or disregard for the order of this honorable court, made and entered with respect to said Ed Johnson matter, and that he has in no wise prevented this honorable court from hearing the appeal of the said Ed Johnson.

This defendant has always endeavored to be *o* law-abiding citizen, and has at all times cheerfully acquiesced in the decisions, orders, and mandates of the courts of the country, and especially of this high and honorable court.

And the defendant, having fully answered said information, now prays that this honorable court may order and adjudge that
81 sufficient cause has been shown why this defendant should not be punished as and for a contempt of this honorable court, that said information be dismissed as to him, and that he go hence acquit, and this defendant will ever pray, etc.

WILLIAM MARQUETTE.

JOE V. WILLIAMS,
Attorney for Defendant.

STATE OF TENNESSE,
Hamilton County, ss:

William Marquette, being first duly sworn, deposes and says that he is one of the defendants in the foregoing case, and that he has read and knows the contents of the foregoing answer, and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

[SEAL.] WILLIAM MARQUETTE.

Subscribed and sworn to before me, this 8th day of October, 1906.

R. M. WATKINS,
Deputy Clerk U. S. Circuit Court.

82 Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," and "J," to the answer of William Marquette in the case of the United States of America, complainant, *vs.* John F. Shipp and others, defendants, No. 12, original, in the Supreme Court of the United States.

EXHIBIT "A."

STATE OF TENNESSEE,
Hamilton County, ss:

M. L. Crum, being first duly sworn, deposes and says that he is a physician in the city of Chattanooga, Hamilton County, Tennessee, and that he is now and has been for some time past the house physician in charge at the Erlanger Hospital, in said city; that on and prior to March 19th, 1906, he was in the habit and custom of going to the office of Dr. Cooper Holtzclaw at night for the purpose of study; and affiant remembers distinctly of being at the office of the said Dr. Cooper Holtzclaw on the night of March 19th, 1906, from about 7 p. m. to 10 p. m., and affiant remembers that Mr. William Marquette called at said office between the hours of 8 p. m. and 9 p. m. on said night for the purpose of procuring treatment from the said Dr. Holtzclaw; that at said time the said Dr. Holtzclaw was not present, but was making a call, and did not return to his office till about 9 o'clock. Affiant and said Marquette engaged in conversation until the said Dr. Holtzclaw came, at which time the said Marquette went into the private office of the said Dr. Holtzclaw for consultation. Affiant states that the said Marquette remained at said office until the hour of 9 or 9.30 p. m., when he left the same. Affiant distinctly recalls the date of the visit of the said Marquette to said office for the
83 reason that on that date this affiant presented to the said Dr. Holtzclaw a book and inscribed therein the name and date of said presentation.

[SEAL.] M. L. CRUM.

Sworn to and subscribed before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "B."

STATE OF TENNESSEE,
Hamilton County, ss:

E. C. Johnston, being first duly sworn, makes oath that he is a practicing physician in the city of Chattanooga and has been for some time past, and that he is now and was, on the 19th day of March, 1906, located in the office of Dr. Cooper Holtzclaw in said city.

Affiant distinctly remembers that Mr. William Marquette came to the office of the said Dr. Holtzclaw somewhere between the hours of 8 and 9 o'clock on the evening of the 19th day of March, 1906, for the purpose of procuring treatment from the said Dr. Holtzclaw. At the time of the arrival of the said Marquette he, the said Dr. Holtzclaw, was absent from his office, and did not come until late and the said Marquette waited until he arrived. This affiant left the office of the said Dr. Cooper Holtzclaw about 9 o'clock on said evening, at which time the said Marquette was still in conversation with the said Dr. Holtzclaw.

[SEAL.] E. C. JOHNSTON.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

84 EXHIBIT "C."

STATE OF TENNESSEE,
Hamilton County, ss:

L. B. Coleman, being first duly sworn, makes oath that on the night of March 19th, 1906, he was a prescription clerk in the drug store of Robert J. Miller in the city of Chattanooga, and that on said night he distinctly remembers the refilling of two prescriptions for William Marquette, and that the said Marquette waited for the refilling of the same. This affiant has no distinct recollection as to the particular hour the said Marquette was at said drug store, except that he knows that it was some time after dark and in the night time. This affiant and the said Marquette engaged in quite a lengthy conversation in relation to the relative value of the prescriptions he was getting re-filled, and perhaps talked on other subjects. The prescriptions referred to had previously been given to the said Marquette by Dr. Cooper Holtzclaw.

[SEAL.] L. B. COLEMAN.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "D."

HAMILTON COUNTY,
State of Tennessee, ss:

W. D. Bowers, being first duly sworn, makes oath that on the night of March 19th, 1906, he was engaged in running a restaurant in
85 the city of Chattanooga, Hamilton County, Tennessee. That on the said night, somewhere between the hours of 8.30 p. m.

and 9.30 p. m. Mr. William Marquette came into the restaurant of this affiant and purchased some sugar from him and had said sugar charged to said William Marquette.

Affiant remembers that said Marquette was in his place of business at said time, because the matter of the lynching of one Ed Johnson was discussed, and because the said Marquette had the sugar, procured at that time, charged to him under the date of March 19th, 1906.

[SEAL.] W. D. BOWERS.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "E."

STATE OF TENNESSEE,
Hamilton County, ss:

H. M. Allen, being first duly sworn, deposes and says that on the night of March 19th, 1906, he was a clerk in the Miller pharmacy in the city of Chattanooga, and that on said night William Marquette came into said pharmacy and procured from him, this affiant, some package or article, the name of which he does not remember. This affiant remembers that the said William Marquette and another gentleman, whose name he understands was Mr. Charles Karston, were sitting at the fountain drinking and at the same time discussing the mob. This affiant asked them what the result was, and either the said Marquette or the said Karston remarked that they understood
86 the mob had gone to the county bridge with said Ed Johnson to hang him. Some time previous to this conversation, affiant had heard that a mob was at the jail breaking doors down for the purpose of hanging the said Ed Johnson. This conversation of affiant, with said Marquette and Karston, occurred about the hour of 10 o'clock on said night, as near as this affiant can remember.

[SEAL.] H. M. ALLEN.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "F."

STATE OF TENNESSEE,
Hamilton County, ss:

Charles Karston, being first duly sworn, deposes and says that on the night of March 19th, 1906, and the night of the lynching of Ed Johnson, he was, and for some time prior thereto had been, in the employ of the Chattanooga Times in the city of Chattanooga as machinist. That at about the hour of 10 o'clock on said 19th day of March, 1906, he was advised that a telephone message had been received at the office of the said Chattanooga Times to the effect that a mob had congregated at the county jail in said city for the purpose of mobbing

one Ed Johnson. That shortly after said message was received, or said to have been received, this affiant left the office of the said Chattanooga Times and walked across the street to Miller's pharmacy at the corner of Eighth street and Georgia avenue and went to the fountain and called for a glass of coca-cola. That at the time this affiant entered said pharmacy, William Marquette was sitting there
87 near the fountain on a stool and this affiant remarked to the said Marquette that "a mob has gone up after the nigger," and this affiant and the said Marquette sat there and talked the matter over and drank the coca-cola ordered, and after doing this, affiant and the said Marquette walked out on the sidewalk where they stood on the curbing and talked for quite a little while. When their conversation ended, affiant left to return to his work in the office of the said Chattanooga Times, and the said Marquette walked on up the street, and this was the last affiant saw of the said Marquette that night. This affiant is well acquainted with the said Marquette, and can not be mistaken as to the fact of seeing him at the time and place above mentioned, and of having the conversation referred to. When this affiant and the said Marquette parted on said street, it was about the hour of 10 p. m.

[SEAL.] CHARLES KARSTON.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "G."

STATE OF TENNESSEE,
Hamilton County, ss:

Robert S. Mastin, being first duly sworn, deposes and says that on the night of March 19th, 1906, he was boarding at the same place where William Marquette and his wife boarded. Affiant had been to the opera house on that night, and returned to his boarding house at about 11 o'clock, and while on his way so returning, he was told by some one that one Ed Johnson had been hung, and on the arrival of affiant to his said boarding house he went to the room of Mr. Frank Povolisky. On returning to his room William Marquette
88 called or spoke to affiant from the toilet on said third floor, and asked his if they (meaning the mob) had gotten said Ed Johnson from the jail. Affiant told him, the said Marquette, that they had gotten said Ed Johnson and gone to the county bridge to hang him.

[SEAL.] ROBERT S. MASTIN.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "H."

STATE OF TENNESSEE,
Hamilton County, ss:

F. A. Frawley, being first duly sworn, deposes and says that on the morning following the night of the lynching of one Ed Johnson, in the city of Chattanooga, Hamilton County, Tennessee, he was at the jail of said county. Affiant says that on said morning William Marquette visited said jail, and requested permission to visit the cell previously occupied by the said Ed Johnson. Affiant thereupon requested Mr. J. G. Richardson, who was also a deputy sheriff, and then acting as day jailer, to conduct said Marquette to said cell, which he did, along with several other persons who came in about that time. The said Marquette spent some time, probably an hour, about the jail and then left.

[SEAL.] F. A. FRAWLEY.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

89 EXHIBIT "I."

STATE OF TENNESSEE,
Hamilton County, ss:

J. G. Richardson, being first duly sworn, deposes and says that he was acting as day jailer at the county jail of Hamilton County, Tennessee, on the morning after the lynching of one Ed Johnson, and that on said morning William Marquette and several other persons came to said jail and wanted to go up stairs and see the cell that the said Ed Johnson had occupied and he was requested by one F. A. Frawley, a deputy sheriff, to take them up and turn them into the cell, which affiant did. After the said William Marquette and other persons had been turned into said cell, affiant saw some one hand to the said William Marquette some letters that he had found in said cell and the said William Marquette took the same. Said letters were addressed to the said Ed Johnson. There was one boy and two or three men with said Marquette and the cage was full, or almost full, when affiant turned them in. This occurred on the morning after the said lynching, and was at or about the hour of 9 o'clock.

[SEAL.] J. G. RICHARDSON.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "J."

STATE OF TENNESSEE,
Hamilton County, ss:

H. D. Rider, being first duly sworn, deposes and says that he is a building contractor in the city of Chattanooga, being a
90 member of the firm of Cox & Rider, and that on the morning after the lynching of the one Ed Johnson in the city of Chat-

tanooga, Hamilton County, Tennessee, he happened to pass by the place of business of William Marquette, and entered into a conversation with the said Marquette in relation to the mobbing of the said Ed Johnson, and the said William Marquette then produced two letters addressed to the said Ed Johnson which the said Marquette stated he had procured, or had handed to him, at the county jail that morning, and thereupon one of said letters was handed to this affiant, which he received and took away with him, and the other letter was retained by the said William Marquette.

[SEAL.] H. D. RIDER.

Subscribed and sworn to before me, this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

91 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainant, vs. John F. Shipp et al. Answer of William Marquette. Filed October 15, 1906.

92 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP AND HIS DEPUTIES AS sheriff, and others, defendants.

Answer of James William Beeler to the rule to show.

HEAD & FORD,
Attorneys for Defendants.

93 In the Supreme Court of the United States.

October term, 1906. No. 26. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP AND HIS DEPUTIES as sheriff, and others.

Reply of James William Beeler to the information filed in this cause by the Honorable William H. Moody, Attorney-General of the United States, against the sheriff of Hamilton County and his deputies as such sheriff and others, including among the others this respondent.

And now comes this defendant in proper person, who is called in the petition William Beeler, and for reply to the petition says his true and lawful name in James William Beeler, and he is a citi-

zen of Hamilton County, Tennessee, and was such at the time that one Ed Johnson, a colored man, was put to death in Chattanooga, Tennessee. Now he lives in the city of Chattanooga, and is engaged in the retail liquor business at No. 201 Market street in said city, and was engaged in the same business at the same place when said Johnson was put to death, though at that time he lived with his family, consisting of wife and two children, in Avondale, two miles from his place of business.

Upon information and belief he admits that the said Ed Johnson was tried and convicted of the crime of rape in the criminal court of Hamilton County, held in Chattanooga, on or about the 11th day of February, 1906, and was adjudged to suffer the penalty of death therefor. While he may have heard thereafter of some proceeding taken, or to be taken, in his behalf, respondent is not able to say what the proceedings were, as taken or contemplated, and he feels sure that he never knew anything as to the result of
94 the same, and that he did not know the nature thereof or grounds therefor. As to the trial before the United States Court for the Eastern Division of Tennessee upon this petition, return, answer, and replication and the testimony of witnesses examined in open court, together with the argument of counsel, he knows nothing; at least now he remembers nothing whatever more than this: He had heard in some way that proceedings had been taken or were to be taken in his behalf to have his case carried to the Supreme Court of the State or some higher court, but which he did not know. Respondent does not keep posted as to the proceedings in the courts; he, however, remembers reading or hearing nothing whatever about the petition presented to the Hon. John M. Harlan, an associate justice of this court, or any action had thereon. This respondent feels sure that he did not know at the time Ed Johnson was put to death that this court had made any order touching his case or of the notification given of such order by the clerk of this court to the sheriff of Hamilton County or other person. If any publication of the order was made in the evening papers of the city on March 19, 1906, he has now no recollection of reading or hearing of the same. He did not then know that Ed Johnson was in confinement in the jail of Hamilton County, for he had been confined in jail outside of Hamilton County, and respondent did not then know where he was confined.

As to the statements contained in the petition relating to the sheriff and his deputies, respondent knows nothing, and he is advised that it is not material that he make further answer.

Respondent will here state that he was not one of the mob who took said Ed Johnson from the jail and put him to death, and had no knowledge that such action was to be taken. Hence he denies that on the evening or night of March 19, 1906, in Chattanooga, he in any way "willfully, wrongfully did combine, conspire, confederate, and agree together to break and enter the said county jail of Hamilton County for the purpose of taking therefrom the person of the said Ed Johnson

to lynch and murder him (the said Ed Johnson) with intent then and there had and entertained by the said defendants, and each of them, to show their contempt and disregard for the order of this honorable court, made, entered, issued, and published as aforesaid, and for the purpose of preventing this honorable court from hearing the appeal of the said Ed Johnson allowed by this court as aforesaid, and
95 for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States." This respondent had no connection with said lynchers or mob, and took no part in anything that was done toward the death of said Ed Johnson. When said mob assembled at and entered the county jail, as he is informed, respondent was at his place of business aforesaid, attending to his business, and someone, whose name is not now remembered, came into his saloon and said there was a mob at the jail, when one of them tried to get connection with the jail to ascertain the truth of the statement made, but failed to get the connection. And then the policeman called up "Turners' Hall," from which place he learned that the mob had assembled at the jail, and that they had broken open the outside door and were already in the jail. It was then something after 9 o'clock at night, and respondent remained in his place of business until after the hour for him to close his place of business for the night, which was 10 o'clock, fixed by an ordinance of the city council for the closing of all saloons. Remaining there for a while after that hour straightening out things in the saloon, he left, walking up Market street, intending to return to his home; and reaching Sixth street, he heard a noise as of knocking or hammering up in the direction of the jail, when he turned into that street leading in the direction of the jail located on Walnut street, between Sixth and Seventh streets, and when he reached Walnut street he turned toward the jail and walked a short distance, when he met Baxter Pope, who told him that the mob was in the jail, and in a few moments he and Pope crossed to the east side of Walnut street, opposite side from the jail, when they saw the mob coming out of the jail with a colored man without hat or coat, and they passed with him on the opposite side of the street from Pope and himself, going in the direction of the river bridge. Then said Pope and respondent went back into Sixth street and walked toward Cherry street, running parallel with Market and east of and next to Market street, where they met Policeman Ed Boydston, and told him that the mob had a negro and had gone toward the bridge with him. The policeman said he ought to go there, and asked them to accompany him, which they did, accompanying him as far as First street, which was near the bridge, and there they stopped, Boydston continuing on to and on the bridge where the mob was, and soon some shots were fired from that
96 crowd, and immediately Pope and respondent turned away, separated, and respondent went down First street to Market street on to the transfer station of the Electric Railway Company and took the next car for his home, which he reached and where he remained the rest of the night.

This is the whole truth so far as known to this respondent and his whereabouts that night. And he did not know of the men forming or intending to assemble and doing what they did. He knew nothing whatever of what they purposed or were doing, except as herein stated; and he was not in conspiracy with anyone to lynch Ed Johnson or do him any harm, and in going on Walnut street, as stated, he had no thought of encouraging, aiding, abetting in any way whatever the mob in accomplishing what they did. He did not speak to any one of the mob nor did he know any of them, nor did he see their faces.

Respondent here files the affidavits of John T. Edwards, George Forbes, Edgar Boydston, and Baxter Pope, good and reliable citizens of Hamilton County, Tennessee, as to his whereabouts on the night of March 19, 1906, from the hour of the early evening until after that when Ed Johnson was put to death by the mob; and these affidavits respondent prays to have made a part of his response to this proceeding. They are filed as Exhibits A, B, C, and E.

And now having fully answered the petition filed by the Attorney-General of the United States in so far as the same implicates him as one of the mob on the night of March 19, 1906, he prays to be hence dismissed without cost.

JAMES WILLIAM BEELER.

HEAD & FORD,
Attorneys for Respondent.

Affidavit.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared before me, John W. Head, a notary public in and for the county and State aforesaid, James William Beeler, with whom I am personally acquainted, and who made oath in due form of law that the facts and statements as contained in the foregoing answer are true, and those stated upon information derived from others he believes to be true.

JAMES WILLIAM BEELER.

Sworn to and subscribed before me this October 11, 1906.

JOHN W. HEAD,
Notary Public.

97 In the Supreme Court of the United States.

October term, 1906. No. 26. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP AND HIS DEPUTIES as sheriff, and others.

In this cause comes John T. Edwards, and makes oath that he is a colored man, living in Chattanooga, Tennessee, and occupies the business house next to the saloon of the defendant, James William Beeler,

and did so at the time that Ed Johnson was taken by the mob from the county jail of Hamilton County, Tennessee, and lynched. It was on the night of the 19th day of March, 1906, and on that night affiant was at his place of business from about 5 o'clock in the evening until after 10 o'clock that night, and he knows the defendant Beeler well, and has known him for about four years. Their places of business have been adjoining for the past two years. He knows that Beeler was in his saloon that night from about dark until a few minutes after 10 o'clock thereafter, for the reason that affiant was in his saloon several times between those hours, and each of them stood in their respective doors talking when neither had any customers to be waited on, and were talking together as they were accustomed to do. The defendant had on his white apron as a bartender, and was on duty that night from dark until after 10 o'clock, and was not absent therefrom between those hours. When affiant got the news that a mob was at the jail and attempting to force an entrance therein, he went in defendant's saloon to tell him about it, and he was then therein, and the matter was talked of by and between Beeler, affiant, and the others in the saloon. There is a city ordinance requiring saloons to be closed at 10 o'clock at night, and at that hour Beeler closed his saloon and remained on the inside some twenty minutes, then came out on the street while affiant was standing in the door of his restaurant, and he saw Beeler walk up Market street toward the transfer station, as he was accustomed to do at night after closing and going to his home.

JOHN T. EDWARDS.

Sworn to and subscribed before me this October 4th, 1906.

JOHN W. HEAD,
Notary Public.

98 In the Supreme Court of the United States.

October term, 1906. No. 26. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP AND DEPUTIES as sheriff, and others.

In this case the affiant, George Forbes, makes oath that he is a citizen of Chattanooga, Hamilton County, Tennessee, and has been such resident for twenty-seven years, and is a cooper by trade, working at that business for the Chattanooga Brewing Company. Affiant is well acquainted with the defendant, James William Beeler, and on the night of March 19, 1906, when Ed Johnson was taken from the county jail and lynched by the mob, he was at the saloon of defendant Beeler, having gone there about 7 o'clock that night and remained there until he closed the saloon that night at or about 10 o'clock. He was in the saloon with Beeler from the time he went there until the saloon was closed, and was talking with Beeler much of the time, and he knows that during the time referred to Beeler was not with the

mob and did not leave the saloon, but was there on duty and waiting on his customers. Affiant and Beeler talked awhile in front of the saloon door after closing, when Beeler walked on up Market street in company with affiant, and they separated, affiant going home and Beeler toward the transfer station. While Beeler and myself and others were in the saloon some one came therein and told us of the mob being at the jail.

GEORGE FORBES.

Sworn to and subscribed before me this October 4th, 1906.

JOHN W. HEAD,
Notary Public.

In the Supreme Court of the United States.

October term, 1906. No. 26. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP AND DEPUTIES as sheriff, and others.

In this cause comes Edgar Boydston, and makes oath that he
99 is twenty-eight years of age, and lives now and has resided in Chattanooga, Hamilton County, Tennessee, all his life, and he is acquainted with the defendant, James William Beeler, and on the night of March 19, 1906, when Ed Johnson was taken from the Hamilton County jail and lynched, he was in Chattanooga; and between 8 and 9 o'clock he went in the saloon of said defendant Beeler, and found him in there on duty and behind the counter, and while he was in there, some one came in and announced that there was a mob at the jail, and immediately affiant went to the 'phone in the saloon and tried, but failed, to get connection with the jail. Then he succeeded in getting 'phone connection elsewhere, and learned of the mob being there. Affiant remained there but a short time, and during all this time Beeler was at the saloon, and did not leave. Affiant left, and on getting away from there, he heard the noise of hollowing along Walnut street, evidently after the mob had left the jail with Ed Johnson, and later he met Beeler and Baxter Pope at the corner of Sixth and Cherry streets, and they informed affiant that the mob had a negro man and had gone toward the bridge with him. Affiant asked them to go with him, and they all started for the bridge, and on reaching First street they stopped and would go no farther, when affiant went on to and on the bridge near the end, when the firing of gun shots commenced and the negro had been put to death. Beeler and Pope did not go nearer the mob than as stated. And affiant did not see anything more of them that night. After seeing Pope and Beeler at the place mentioned, he stopped at the first 'phone accessible to him and communicated with police headquarters, and gave there information of the mob being there with the negro.

EDGAR BOYDSTON.

Sworn to and subscribed before me this October 5th, 1906.

J. ALLEN HEAD,
Notary Public.

In the Supreme Court of the United States.

October term, 1906. No. 26. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP AND DEPUTIES AS sheriff, and others.

100 In this cause comes Baxter Pope, and makes oath that he is thirty-one years of age and lives in Chattanooga, Hamilton County, Tennessee, and has resided there for about ten years. He is well acquainted with the defendant, James William Beeler; and on the night of March 19, 1906, when Ed Johnson was taken from the Hamilton County jail and lynched, he was in Chattanooga; and at or about the time specified the mob went to the jail, he was in a business house on Market street, and some one came into that house, announcing the fact that a mob was at the jail, when affiant left that place and went to Walnut street near the jail to find out what he could see and hear; and after he had stood on the sidewalk for a while on Walnut street, north of the entrance to the jail, the defendant Beeler came up to where he was standing and they stood there a little while talking; and while standing on the east side of Walnut street, between the jail entrance and Sixth street, the mob came out of the jail building through the front yard and out at the front gate down on the sidewalk of the street, going towards the river bridge; and affiant could see that they had a colored man in charge, but he did not know who it was, and neither could affiant identify any of the members of the mob, and they went on out Walnut street toward the bridge. After they had passed, defendant Beeler and affiant went down Sixth street towards Market street, and at the corner of Cherry and Sixth they met Policeman Ed Boydston, and told him that a mob had a negro and the direction in which they had gone with him. Said Boydston requested affiant and defendant Beeler to go with him, and they all started for the bridge. On reaching First street, affiant and Beeler stopped and went no farther in the direction of the mob, when an immense crowd could be seen on the bridge, and affiant heard the firing of gun shots from that crowd. Affiant did not go nearer the mob than as stated. As soon as the shooting was heard, affiant and defendant Beeler left the corner of First and Walnut streets, and affiant left Walnut street at Fourth street, and he thinks Beeler turned into First street, which would be his route to his business place on Market street. From the time affiant met Beeler on Walnut street until they separated that night at the point stated, affiant knows that Beeler was not a member of and had noth-

ing to do with the action of the mob that night. Affiant runs a meat market in Chattanooga, Tennessee.

BAXTER POPE.

Sworn to and subscribed before me this, 11th day of October, 1906.

JOHN W. HEAD,
Notary Public.

101 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainant, vs. John F. Shipp and his deputies as sheriff, and others, defendants. Answer of James William Beeler. Filed Oct. 15, 1906.

102 In the Supreme Court of the United States.

October term, 1906. No 12. Original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Claude Powell, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

103 THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Claude Powell to the information of Mr. Attorney-General William H. Moody, filed in the above-styled cause, and to the rule to show cause why he should not be punished as and for contempt of this honorable court, issued May 28th, 1906.

By way of answer to the information filed by the Attorney-General and the rule granted by the honorable court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said information or any or either of
104 them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged that the mob attacked the jail a[illegible]r about the hour of nine o'clock p. m., March 19, 1906.

About 7.30 o'clock p. m. of said date, defendant left his place of business and went to the place of business of one Richard Averitt, on Eighth street, in the city of Chattanooga. There he met Patrick Kuntz and was with him at said Averitt's and on Eighth and Ninth streets in said city until after the hour of 10.30 o'clock p. m. About 10.30 o'clock p. m. of said date, defendant started to his home, and on the corner of Ninth and Market streets met an acquaintance, one Chris Mattell, who told him that Ed. Johnson had been taken from the jail and hanged. This was the first information defendant had of the mob or the lynching and murdering of Ed. Johnson.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this honorable court
105 or to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

And now having fully answered the information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

CLAUDE POWELL.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared Claude Powell and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

CLAUDE POWELL.

Subscribed and sworn to before me this 8th day of October, 1906.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

106 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12, original. The United States of America, complainants, vs. John F. Shipp et al. Answer of Claude Powell. Filed Oct. 15, 1906.

107 In the Supreme Court of the United States.

October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

Answer of Charles J. Powell, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

108 THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

Answer of Charles J. Powell to the information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this honorable court, issued May 28th, 1906.

By way of answer to the information filed by the Attorney General and the rule granted by the honorable court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said information or any or either of them, or with any other person or persons to break and enter the jail
109 of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel, or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the

mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock p. m., March 19, 1906.

On said date the defendant was employed at the Chattanooga packing house, engaged in killing cattle for the Chattanooga market. He went to work early in the morning of said date, and worked until about 11 o'clock p. m. Said packing house is situated in St. Elmo, Tenn., a distance of more than three miles from the Hamilton County jail. Defendant has no regular hours of work, but is required to kill all cattle delivered on each day. There was a large number of cattle to be killed on said date, and he did not finish his work until 11 o'clock p. m., as aforesaid.

After leaving his work, defendant went to his home and heard nothing of the lynching until the following morning.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this honorable court
110 or to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

And now, having fully answered the information and rule so far as they affect him, he prays to be hence discharged, and as in duty bound he will ever pray.

CHARLES J. POWELL.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared Charles J. Powell and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

CHARLES J. POWELL.

Subscribed and sworn to before me this 8th day of October, 1906.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

(Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12, original. The United States of America, complainants, vs. John F. Shipp et al. Answer of Charles J. Powell. Filed Oct. 15, 1906.

112 In the Supreme Court of the United States.

October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Bart Justice, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

113 THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Bart Justice to the information filed by Mr. Attorney-General William H. Moody, filed in the above-styled cause, and to the rule to show cause why he should not be punished as and for a contempt of the honorable court, issued May 28th, 1906.

By way of answer to the information filed by the Attorney-General and the rule granted by the honorable court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever, by rumor or otherwise, that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said information or any or either
114 of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know beforehand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel, or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged that the mob attacked the jail at or about the hour of nine o'clock p. m., March 19, 1906.

Defendant left his place of employment, the shops of the United States Pipe and Foundry Company, about 4.30 o'clock p. m. of said date, and went to his home in St. Elmo, Tenn. Defendant's home is about four miles from the jail of Hamilton County.

About 7.30 o'clock p. m. of said date defendant, in company with his wife and daughter, went to the home of one of his neighbors, Jim James, and remained there until about 10.30 o'clock p. m. At that time defendant returned to his home and knew nothing of the lynching of Ed. Johnson until the following morning, when he went to his work.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this honorable court or
115 to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

And now having fully answered the information and rule so far as they effect him, he prays to be hence discharged, and as in duty bound he will ever pray.

BART JUSTICE.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared Bart Justice, and made oath that the facts stated in the foregoing answer are true, to the best of his knowledge, information, and belief.

BART JUSTICE.

Subscribed and sworn to before me this 8th day of October, 1906.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

116 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainants, vs. John F. Shipp et al. Answer of Bart Justice. Filed Oct. 15, 1906.

117 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of John Jones, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

118 THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of John Jones to the information of Mr. Attorney-General William H. Moody, filed in the above-styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this honorable court, issued May 28th, 1906.

By way of answer to the information filed by the Attorney-General and the rule granted by the honorable court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said information or any or either of
119 them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know beforehand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel, or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged that the mob attacked the jail at or about the hour of nine o'clock p. m., March 19, 1906.

At that time defendant was on Whiteside street, in South Chattanooga, being fully two miles from the Hamilton County jail. Defendant was in the saloon of Mr. E. L. Shepherd, on Whiteside street, from the hour of about 9 o'clock p. m. until the saloon closed at 10 o'clock p. m., in pursuance of an ordinance of the City of Chattanooga, closing all saloons at that hour. After leaving the saloon defendant went to his home in South Chattanooga, and knew nothing of the lynching of Ed. Johnson until the following day.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this honorable court or to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

120 And now having fully answered the information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

JOHN JONES.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared John Jones and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

JOHN JONES.

Subscribed and sworn to before me this 8th day of October, 1906.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

121 (Endorsed:) In the Supreme Court of the United States. October Term, 1906. No. 12. Original. The United States of America, complainants, vs. John F. Shipp et al. Answer of John Jones. Filed Oct. 15, 1906.

122 In the Supreme Court of the United States.

October Term, 1906.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS. } No. 12. Original.

Answer of A. J. Cartwright, one of the defendants.

SHUMATE & MADDOX,
JOHN H. EARLY,
Attorneys for Defendant.

123 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS. } No. 26. Original.

Now comes A. J. Cartwright, one of the defendants in the above-styled cause, and for separate answer to the information filed against

him and others in the Supreme Court of the United States of America on the 25th day of May, 1906, as well as to the rule to show cause why he should not be punished as and for contempt of said honorable court, issued on the 28th day of May, 1906, says:

The said A. J. Cartwright respectively submits to the court that as to him the charges of combination, confederation and agreeing together with others to break and enter the jail of Hamilton County for the purpose of taking therefrom Ed Johnson and murdering him or for any other purpose is wholly without foundation in fact. The defendant respectively informs the honorable court that he combined with no one; he confederated with no one; he agreed with no one to take Ed Johnson from the jail of Hamilton County to kill and murder him, the said Ed Johnson. This defendant was not present at the jail on the night Ed Johnson was murdered; he knew nothing about the formation of any mob or organization of disorderly persons to murder said Johnson; he took no part in said murder,
124 and then had and now has no sympathy for those who did murder the said Johnson. The defendant respectfully informs the court that he is a law-abiding citizen; that he is a man of family, and that he, in connection with his brother, R. T. Cartwright, does a general merchandise business in a different part of the city of Chattanooga from the county jail, and his business place is some three-fourths of a mile from the county bridge where Ed Johnson is said to have been murdered.

On the night of March 19th, 1906, the defendant then had pending in the city council of the city of Chattanooga, an ordinance or resolution granting him the privilege of erecting in front of his stores on the corner of East Ninth and Peeples streets in said city of Chattanooga, a balcony. The defendant went to the city hall not later than 8 o'clock, and he believes as early as 7.30 o'clock, on said night of March 19th, 1906, for the purpose of securing the passage of said ordinance or resolution and remained there until as late as 9.15 o'clock, and he believes as late as 9.35 o'clock. After securing the passage of said ordinance or resolution, the defendant went immediately to his home, except he went into the saloon of Joe Seagle, who does business just across Peeples street from this defendant and remained in said place only a few minutes until closing time of said saloon, which was 10 o'clock p. m.

The defendant then went upstairs over his store, where his family lived, and went to bed. He knew nothing of the organization of the mob, the storming of the jail, or the murder of Ed Johnson until the following day, March 20th.

This defendant again protests his innocence of the charges made against him; he, in no way, participated in the lynching of Ed Johnson, either by word, act or sympathy; he is in no manner, by his conduct, responsible for the charges made against him.

This defendant has, at all times, stood for law and order in every community where he has lived; he rever's the honor and integrity of the courts of the land and has at all times manifested for them the

highest respect, and has at no time manifested contempt for this honorable court.

125 And now having fully answered the information and rule to show cause, etc., in so far as he is affected, this defendant prays to be hence dismissed, and he will ever pray, etc.

A. J. CARTWRIGHT.

SHUMATE & MADDOX,
JOHN H. EARLY,
Attorneys for A. J. Cartwright.

STATE OF TENNESSEE,
County of Hamilton:

Now comes the defendant, A. J. Cartwright, and makes oath that the statements made in his foregoing answer are true in substance and in fact.

A. J. CARTWRIGHT.

Sworn to and subscribed before me, 10th day of October, 1906.

BOYD THOMPSON,
Notary Public.

126 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainants, vs. John F. Shipp et al. Answer of A. J. Cartwright. Filed Oct. 15, 1906.

127 In the Supreme Court of the United States. October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

Answer of R. T. Cartwright to the information filed and rule issued against him and others in this cause.

SHUMATE & MADDOX,
JOHN H. EARLY,
Attorneys for Defendant.

128 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.
No. 26. Original.

And now comes the defendant, R. T. Cartwright, who is informed against as R. F. Cartwright, and for separate answer to the information filed against him and others on the 25th day of May, 1906, and

also to the rule to show cause why he should not be held as and for contempt, issued against him on the 28th day of May, 1906, says:

That he has at no time manifested contempt for this honorable court. He denies that he willfully combined, confederated, or agreed with the other defendants herein to break and enter the county jail of Hamilton County, Tennessee, for the purpose of taking Ed Johnson therefrom with the intent of lynching and murdering the said Ed Johnson. It is true that the said Ed Johnson was a prisoner in the Hamilton County jail and that he was taken therefrom by certain disorderly persons, who took him to the Tennessee River bridge and lynched him, as this defendant verily believes.

129 This defendant respectively assures the court that he had no hand in and took no part in the murdering of Ed Johnson. This defendant and his brother A. J. Cartwright, do business about three-fourths of a mile from the county jail and about one mile from the county bridge, where Johnson was murdered. The defendant says that he was not at the county jail or the county bridge the night Ed Johnson was lynched; he knew nothing of the matter whatever until the following morning, March 20th. He confederated with no one; he agreed with no one to take Johnson from the jail and kill him. This defendant does not know many people in Hamilton County, Tennessee, as he has lived here only three years, and during that time he has been so closely confined to his place of business that he has formed the acquaintance of but few people outside of his business relations. He has taken but little, if any, interest in the affairs of Chattanooga outside his own private business. He further shows the court that he is of a very retiring disposition. He seldom mingles in crowds or seeks the association of many people. His life is almost wholly given to his business and to his family. The defendant stands for law and order at all times and under all circumstances. He entertains the highest respect for American institutions; he believes in the honor and integrity of the courts of the country and possesses for them the highest esteem, and he especially reveres this honorable court.

On the night of March 19, 1906, the defendant was at his place of business in the city of Chattanooga at 732–734 East Ninth street. His brother, A. J. Cartwright, was at the city council on that night seeking the passage of an ordinance permitting the erection of a balcony in front of their new stores then in course of construction. This put double duty on the defendant and he remained at the store

130 till about 9.30 o'clock, p. m., when he went upstairs and soon thereafter retired for the night, and knew nothing of the lynching of Johnson until the following day.

This defendant again reiterates his innocence of the charges preferred against him in the information. He took no part in said lynching; he did not counsel such act of lawlessness, and he has expressed no sympathy for those who did murder the said Ed Johnson.

And now having fully answered the information and the rule to show cause, etc., in so far as he is affected, this defendant prays to be hence dismissed, and he will ever pray, etc.

R. T. CARTWRIGHT.

SHUMATE & MADDOX,
JOHN H. EARLY,
Attorneys for R. T. Cartwright.

STATE OF TENNESSEE,
County of Hamilton:

Now comes the defendant R. T. Cartwright and makes oath that the statement made in his foregoing answer are true in substance and in fact.

R. T. CARTWRIGHT.

Sworn to and subscribed before me, 10th day of October, 1906.

BOYD THOMPSON,
Notary Public.

131 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainants, *vs.* John F. Shipp et al. Answer of R. T. Cartwright. Filed Oct. 15, 1906.

132 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Henry Padgett, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

133 THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Henry Padgett to the information of Mr. Attorney-General William H. Moody, filed in the above-styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this honorable court, issued May 28, 1906.

By way of answer to the information filed by the Attorney-General and the rule granted by the honorable court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said information or any or either of them, or with any other person or persons to break and enter the jail
134 of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know beforehand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel, or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged that the mob attacked the jail at or about the hour of nine o'clock p. m., March 19, 1906.

At that time defendant was in the bar of the Stag Hotel on Market street, in Chattanooga, where he had been since 7 o'clock p. m. with some friends. He was with Messrs. Will George, Quincy Chambers, Dave M. Junkins, Tom Duckworth, and the proprietor, Mr. A. L. Stanley. He remained in said bar until it was closed at 10 o'clock p. m., in pursuance of an ordinance of the city of Chattanooga, requiring all saloons to close at 10 o'clock p. m.

Defendant then went into the pool room of said Stag Hotel and remained there until near midnight, when he went to his home.

Defendant knew nothing of the mob nor the lynching of Ed. Johnson until the following morning.

This defendant denies that he ever at any time did any act
135 to show contempt and disregard for the order of this honorable court or to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

And now having fully answered the information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

HENRY PADGETT.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared Henry Padgett and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

HENRY PADGETT.

Subscribed and sworn to before me this 8th day of October, 1906.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

136 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12, original. The United States of America, complainants, *vs.* John F. Shipp et al. Answer of Henry Padgett. Filed Oct. 15, 1906.

137 In the Supreme Court of the United States.

October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of William Mayes, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

138 THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of William Mayes to the information of Mr. Attorney-General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this honorable court, issued May 28th, 1906.

By way of answer to the information filed by the Attorney-General and the rule granted by the honorable court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when

Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate,
139 or agree with the persons named in said information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel, or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock p. m., March 19, 1906.

At that time defendant was at his home on Poplar street, in Chattanooga, some distance from said jail. He retired about 7.30 o'clock p. m. on that evening, and remained at his home in bed until the following morning. He first learned of the mob and lynching of Ed. Johnson on the morning of March 20th, by telephone message from a friend.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this honorable court or to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

140 And now having fully answered the information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

WILLIAM MAYES.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared William Mayes and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

WILLIAM MAYES.

Subscribed and sworn to before me this 8th day of October, 1906.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

141 (Endorsed:) In the Supreme Court of the United States, October term, 1906. No. 12, original. The United States of America, complainants, vs. John F. Shipp et al. Answer of William Mayes. Filed Oct. 15, 1906.

142 In the Supreme Court of the United States. October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Answer of Frank Ward.

JOHN A. HOOD,
Attorney for Defendant.

143 In the Supreme Court of the United States. October term, 1906. No. 26. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Now comes Frank Ward, one of the defendants in the above-styled cause, and for answer to the information and scire facias served on him in said case, says:

I.

That he admits the charges, conviction, and sentence of Ed. Johnson as set out and detailed in the first paragraph of the information of Attorney-General William H. Moody, filed against defendant and others in this case.

II.

That the second, third, and fourth paragraphs of said information defendant neither admits nor denies, as he has no personal knowledge of the facts therein detailed and set out, and knew nothing of this honorable court having granted any order in reference to said case against said Ed. Johnson, or having taken any jurisdiction in said case whatever until the morning of the 20th day of March, 1906, when he read an account of the lynching of said Johnson in the Chattanooga Morning Times, which was the first information this defendant had, either of the lynching of said Johnson or of this honorable court having assumed jurisdiction of said case.

V.

That this defendant denies that he did combine, conspire,
144 confederate or agree with any person or persons to lynch, or murder, or kill, or injure in any manner the said Ed. Johnson on the 19th day of March, 1906, or at any other time, and positively

denies that he had anything whatever to do with the lynching of the said Ed. Johnson, and has no knowledge of who was concerned therein, and knows nothing of the facts pertaining to the same, and denies that he has done anything, by word, thought, or deed, to bring him in contempt of this honorable court.

The facts are that this defendant is a brickmason by trade, and lives at 1057½ Market street, in the city of Chattanooga, Tennessee, something near one-half a mile from the county jail and court-house, and had been at work all day on the 19th day of March, 1906, and came home about supper time from his work, and after eating his meal, stayed about the building where he lives, and near thereto, at the places of business of Mr. Deitch at 1061 Market street, and the place of business of Mr. W. P. Barnes at 1057 Market street, all the evening and night of that day until he retired about 11 o'clock p. m., and was not about or near the county jail, court-house, or Tennessee River Bridge, that day or on that night, and never knew of a rumor that said Johnson would likely be lynched that night, and never saw a copy of the evening paper of March 19th, 1906, referred to in paragraph 3 of the information filed against him in this case, nor read, nor heard read, any communication in said paper, or any other paper of said date concerning the jurisdiction taken by this honorable court of said case, or have any information whatever in that respect upon said date, but as before stated, the first information this defendant had that this honorable court had assumed jurisdiction of said case, or that said Johnson had been lynched, was first communicated to him by an article he read published in the Chattanooga Morning Times on the 20th day of March, 1906.

Nor did this defendant know on said 19th day of March, 1906, anything about the clerk of this honorable court notifying defend-
145 ant John F. Shipp, or other person by telegram, or otherwise, of the making or entering of any order to the effect that all proceedings against the said Johnson were ordered stayed by this honorable court.

As to the whereabouts of this defendant on the evening and night of the said 19th day of March, 1906, defendant herewith submits the affidavits of W. P. Barnes, whose place of business is 1057 Market street, Chattanooga, Tennessee, which affidavit is marked "Exhibit A" and attached hereto and made a part of this answer.

And this defendant also presents the affidavit of J. M. Prince, who is a clerk for said W. P. Barnes, at his place of business, 1057 Market street, which affidavit is marked "Exhibit B" and attached hereto and made a part of this answer.

And this defendant also presents the affidavit of his wife, Mrs. N. E. Ward, who lives at 1057½ Market street in Chattanooga, which affidavit is hereto attached marked "Exhibit C" and made a part of this his answer, and which, if competent, in this kind of a case, he respectfully submits same to the consideration of this honorable court.

And in further support of this defendant's innocence of the charge contained in the petition against him in this case, he herewith sub-

mits the affidavit of Mr. Walter Spradley, whose place of business is 1061 Market street in the city of Chattanooga, Tennessee, which is marked "Exhibit D" and attached hereto and made a part of this answer.

And now having fully answered defendant prays to be dismissed with his reasonable costs.

JOHN A. HOOD,
Attorney for Defendant.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared before the undersigned authority, Frank Ward, defendant in the above styled cause, who being first duly sworn, deposes and says: That he has read the statements in the foregoing answer, and that the same are true to his own
146 knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

FRANK WARD.

Sworn to and subscribed before me on this the 11th day of October, 1906.

[SEAL.] E. J. NOLAN,
Notary Public, Hamilton County, Tennessee.

I hereby certify that my commission as notary public is dated on the 10th day of August, 1904, and expires on the 10th day of August, 1908.

[SEAL.] E. J. NOLAN,
Notary Public.

"EXHIBIT A."

To the answer of Frank Ward in the case of the United States vs. John F. Shipp et al., No. 26, in the Supreme Court of the United States.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared before the undersigned authority, W. P. Barnes, who, being duly sworn, deposed as follows: I am a citizen of Chattanooga, Tennessee, and reside at No. 10 Hotel street, and own and run a saloon at 1057 Market street in said city.

I remember the night that it is said that a colored man by the name of Ed Johnson was lynched on the 19th day of March, 1906.

I am acquainted with Frank Ward, who is charged by the Government with participating in said lynching.

Said Ward lived at that time, and still lives, over my saloon at 1057 Market street, Chattanooga, Tennessee.

I remember very well on that night that Mr. Ward was in
147 and about my saloon from six o'clock p. m. until after I closed my saloon at ten o'clock p. m.

He was drinking considerable that evening and was in and out of the saloon every few minutes from six p. m. until I closed my doors at ten o'clock that night, and after I closed I remained in my saloon until about 11 o'clock working and arranging everything for the next morning, and came out of my saloon about 11 o'clock to go home, and found Mr. Ward on the outside in front pretty well intoxicated, so much so that I thought it best to put him on the inside of the hall door which leads upstairs to where he lives, which I did. This was about 11 o'clock p. m., and when I put him on the inside I went home and never saw anything more of him that night.

W. P. BARNES.

Sworn to and subscribed before me on this the 11th day of October, 1906.

[SEAL.] E. J. NOLAN,
Notary Public, Hamilton County, Tennessee.

"EXHIBIT B."

To the answer of Frank Ward in the case of the United States vs. John F. Shipp et al., No. 26, in the Supreme Court of the United States.

STATE OF TENNESSEE,
Hamilton County:

Personally appeared before the undersigned authority, J. M. Prince, who, being duly sworn, deposed as follows: I live in Chattanooga, Tennessee, at 407½ Patton street, and am a bartender for Mr. W. P. Barnes, at 1057 Market street in said city. I always go on duty at the saloon at 5 o'clock in the morning and remain on duty until 8 o'clock at night, and then Mr. Barnes relieves me at that time—8 p. m.

I remember the occasion of Ed Johnson being lynched on the 19th day of March, 1906. I am well acquainted with Mr.
148 Frank Ward, who is accused by the Government of taking part in that lynching.

Mr. Ward lives up over the saloon at 1057 Market street, and did at that time. After supper on that evening Mr. Ward came down into the saloon and was drinking some, and he remained in and about the saloon that night until I left after 8 o'clock p. m. I got off of duty at 8 o'clock p. m. that night, but did not leave the saloon until about 8.20 p. m., and Mr. Ward was in the saloon when I left. He was considerably intoxicated when I left.

J. M. PRINCE.

Sworn to and subscribed before me on this the 11th day of October, 1906.

[SEAL.] E. J. NOLAN,
Notary Public, Hamilton County, Tennessee.

"EXHIBIT C."

To the answer of Frank Ward in the case of The United States vs. John F. Shipp, et al., No. 26, in the Supreme Court of the United States.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared before the undersigned authority, Mrs. N. E. Ward, who being duly sworn, deposed as follows:

I live at No. 1057½ Market street in the city of Chattanooga, Tennessee, and am the wife of Mr. Frank Ward, who has been served with notice by the United States officers to appear at Washington, D. C., on the 15th day of October, 1906, as being implicated in the lynching of Ed Johnson, a colored man, some time ago, on the 19th day of March, 1906.

I know that on the night of that day Mr. Ward was here about the building where we live, from the time he ate supper about 5.30 or 6 o'clock p. m. up to about 11 o'clock p. m. when he went to bed.

149 He was down in the saloon of Mr. W. P. Barnes underneath where we live a part of that time, and up here a part of the time during these hours.

I remember I was up stairs at the front window looking down in front of the building at ten o'clock p. m. when Mr. Barnes closed the doors of his saloon at ten o'clock. I then saw Mr. Ward and another man standing out on the edge of the sidewalk by the side of the telephone post in front of the saloon. I do not know whether he came out of the saloon just as the doors closed or not, but about that time I saw him and this man out on the sidewalk.

Mr. Ward was drinking some that night, and I kept watching him on the sidewalk, thinking that he would come up stairs, but he did not come for some little time, and a little later some one put him inside the hallway and locked the door, and then he came up stairs, and never left the building any more that night. I heard afterward that it was Mr. Barnes, who owns the saloon, that put him inside the hallway and locked the hall door.

N. E. WARD.

Sworn to and subscribed before me on this the 11th day of October, 1906.

[SEAL.] E. J. NOLAN,
Notary Public, Hamilton County, Tennessee.

"EXHIBIT D."

To the answer of Frank Ward in the case of The United States vs. John F. Shipp et al., No. 26, in the Supreme Court of the United States.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared before the undersigned authority, Walter D. Spradley, who, being duly sworn, deposed as follows:

My place of business is at 1061 Market street in the city of
150 Chattanooga, Tennessee. I remember the night that Ed Johnson was said to have been lynched on the 19th day of March, 1906.

I know Mr. Frank Ward, who is charged by the Government with participating in said lynching. My place of business is that of a clerk at 1061 Market street, Chattanooga, and on the night of said lynching Mr. Deitch, my employer, was off duty and I had to stay on duty and work until 11 o'clock that night. I work for Mr. Deitch and usually get off from work at 7 o'clock in the evening. Mr. Deitch runs a restaurant.

But on this evening and night I had to work until 11 o'clock p. m. and Mr. Ward came into our restaurant four or five times.

I remember that he was in the restaurant about half past nine, and again about a quarter of ten o'clock p. m.

He was considerably intoxicated that night and was in no condition to have gone to the lynching. I know him well and can not be mistaken about his being there. I put him out at the door of the restaurant and told him to go home about twenty-five minutes after ten o'clock that night. The saloons all close at 10 o'clock and I know that it was a few minutes after that when I put him out, and I told Mr. Ward the saloons were all closed and that he could not get anything more to drink, and for him to go home and go to bed.

WALTER D. SPRADLEY.

Sworn to and subscribed before me on this the 20th day of September, 1906.

JOHN A. HOOD,
Notary Public, Hamilton County, Tennessee.

151 (Endorsed:) In the Supreme Court of the United States. October Term, 1906. No. 12. Original. The United States of America *vs.* John F. Shipp *et al.* Answer of Frank Ward. Filed Oct. 15, 1906.

152 In the Supreme Court of the United States.

October Term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of John Varnell, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

153 THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

The answer of John Varnell to the information of Mr. Attorney-General William H. Moody, filed in the above-styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this honorable court, issued May 28th, 1906.

By way of answer to the information filed by the Attorney-General and the rule granted by the honorable court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said information or any or either of them,
154 or with any other person or persons to break and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know beforehand that a mob was to be formed to lynch said Ed. Johnson and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged that the mob attacked the jail at or about the hour of nine o'clock p. m., March 19, 1906.

Defendant is a police officer of the city of Chattanooga, in Hamilton County, Tenn. On the 19th day of March, 1906, the date said Johnson was hanged, defendant was on duty as a policeman from 5 o'clock a. m. until 3 o'clock p. m. After being relieved of duty defendant went immediately to his home in said city of Chattanooga, and remained there until the next morning at work time. Defendant's daughter was critically ill on said date, and had been for some weeks previous to that time, and defendant was forced to stay with her at night. On said date defendant was at the bedside of his sick child ministering to her needs, from the time he went home until near midnight. Upon going on duty the following morning defendant heard for the first time that Ed. Johnson had been hanged the night before.

This defendant denies that he ever at any time did any
155 act to show contempt and disregard for the order of this

honorable court or to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

And now having fully answered the information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

JOHN VARNELL.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared John Varnell and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

JOHN VARNELL.

Subscribed and sworn to before me this 8th day of October, 1906.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

156 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainants, vs. John F. Shipp et al. Answer of John Varnell. Filed October 15, 1906.

157 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

Answer of Alfred Handman, one of the defendants.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

158 THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

Answer of Alfred Handman to the information of Mr. Attorney-General William H. Moody, filed in the above-styled cause, and to the rule to show cause why he should not be punished as and for contempt of this honorable court issued May 28th, 1906.

By way of answer to the information filed by the Attorney-General and the rule granted by the honorable court, this defenadnt shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said information or any or either of them, or with any other person or persons to break and enter the
159 jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail, or with the mob which lynched and murdered said Ed. Johnson. He did not know beforehand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock p. m., March 19, 1906.

At that time defendant was at the saloon of Ransom & Co., on Market street, in the city of Chattanooga, where he had gone about 8 o'clock p. m. to meet some friends. He met, among others, Messrs. Bill Hodgson, Dick Pooler, and John Kean. By an ordinance of the city of Chattanooga, all saloons are required to close at the hour of 10 o'clock. He remained at said saloon until the closing thereof at 10 o'clock p. m. After leaving said saloon defendant went immediately to Fire Hall No. 1, on Carter street, in said city of Chattanooga, and there met the night watchman, Mr. Henry Gunther, who told him of the lynching of Ed. Johnson. He left the Fire Hall about 10.30 o'clock p. m., and went to his bed at the home of Mrs. Kelly O'Rear, on Gillespie street.

This defendant denies that he ever at any time did any act
160 to show contempt and disregard for the order of this honorable court or to prevent this court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this honorable court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

ALFRED HANDMAN.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
Hamilton County.

Personally appeared Alfred Handman and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

ALFRED HANDMAN.

Subscribed and sworn to before me this 8th day of October, 1906.
[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

161 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12, Original. The United States of America, complainants, vs. John F. Shipp et al. Answer of Alfred Handman. Filed Oct. 15, 1906.

162 And on the same day, to wit, on the 15th day of October, A. D. 1906, orders for appearance for defendants were filed in the words and figures following, viz:

Order for appearance.

Supreme Court of the United States. No. 12, Orig., October term, 1906.

THE UNITED STATES
vs.
JOHN F. SHIPP ET AL.

The clerk will enter my appearance as counsel for the defendants, Shipp, Frank Jones, Calloway, Baker, Taylor, Frauley, Brown, Gibson, Perkins, and Clark.

JUDSON HARMON,
Cincinnati, Ohio.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October term, 1906. Term No. 12, Orig'l. Appearance for Shipp et al. Filed Oct. 15th, 1906.

163 *Order for appearance.*

Supreme Court of the United States. No. 12, Orig'l, October term, 1906.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.

The clerk will enter my appearance as counsel for John F. Shipp and Joseph Clark.

JAMES J. LYNCH,
Chattanooga, Tenn.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October Term, 1906. Term No. 12, Orig'l. Appearance for Shipp & Clarke, defendants. Filed Oct. 15th, 1906.

164 *Order for appearance.*

Supreme Court of the United States. No. 12, Orig'l, October Term, 1906.

THE UNITED STATES OF AMERICA, COMPLAINANT.
vs.
JOHN F. SHIPP ET AL., DEFENDANTS.

The clerk will enter my appearance as counsel for the defendants, Alfred Handman, Claude Powell, Chas. J. Powell, John Jones, John Varnell, Nick Nolan, William Mays, Henry Padgett, and Bart Justice.

T. POPE SHEPHERD,
Chattanooga, Tenn.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October Term, 1906. Term No. 12, Orig'l. Appearance for Alfred Handman et al., Defts. Filed Oct. 15th, 1906.

165 *Order for appearance.*

Supreme Court of the United States. No. 12, Orig'l October Term, 1906.

UNITED STATES OF AMERICA,
vs.
JOHN F. SHIPP AND OTHERS.

The clerk will enter my appearance as counsel for the defendants, Alfred Handman, Claude Powell, C. J. Powell, John Jones, John Varnell, Nick Nolan, Wm. Mays, Henry Padgett, Bart Justice.

LEWIS SHEPHERD,
Chattanooga, Tenn.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October term, 1906. Term No. 12, Orig'l. Appearance for Handman et al., defendants. Filed Oct. 15th, 1906.

166 *Order for appearance.*

Supreme Court of the United States. No. 12. Orig'l. October term, 1906.

UNITED STATES OF AMERICA
vs.
JNO. F. SHIPP ET AL.

The clerk will enter my appearance as counsel for Alfred Handman, Claude Powell, C. J. Powell, J. Varnell, John Jones, Nick Nolan, Bart Justice, and Henry Padgett.

MARTIN A. FLEMING,
Chattanooga, Tenn.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October term, 1906. Term No. 12. Orig'l. Appearance for Alfred Handman et al., defts. Filed Oct. 15th, 1906.

167 *Order for appearance.*

Supreme Court of the United States. No. 12. Orig'l. October term, 1906.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET ALS., LUTHER WILLIAMS, Paul Werner, Frank Ward, William Beeler.

The clerk will enter my appearance as counsel for the Williams, Werner, Ward, and Beeler.

G. W. CHAMLEE,
Chattanooga, Tennessee.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October term, 1906. Term No. 12. Orig'l. Appearance for Williams et al., defts. Filed Oct. 15th, 1906.

168 *Order for appearance.*

Supreme Court of the United States. No. 12. Orig'l. October term, 1906.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.

The clerk will enter my appearance as counsel for William Marquette, respt.

JOE V. WILLIAMS,
Chattanooga, Tenn.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October term, 1906. Term No. 12. Orig'l. Appearance for Marquette, defendant. Filed October 15th, 1906.

169 *Order for appearance.*

Supreme Court of the United States. No. 12. Orig'l. October term, 1906.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.

The clerk will enter my appearance as counsel for A. J. & R. T. Cartwright, respts.

SAM'L P. MADDOX,
Dalton, Ga.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October term, 1906. Term No. 12, orig'l. Appearance for Cartwright & Cartwright, defendants. Filed Oct. 15th, 1906.

170 And afterwards, to-wit: On the 12th day of November, A. D. 1906, the following entry appears of record, viz:

171 No. 12, original.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.

On motion of Mr. Solicitor-General Hoyt, of counsel for the complainant, it is ordered by the court that this cause be, and the same is hereby, assigned for hearing on the preliminary questions of law, without prejudice, on Monday, December 3d next, after Nos. 369, &c.

NOVEMBER 12, 1906.

172 On the same day, to wit, on the 12th day of November, A. D. 1906, the motion to set for hearing was filed in the words and figures following, viz:

In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainants,
v.
JOHN F. SHIPP AND OTHERS, defendants.

Motion to set down for hearing on preliminary questions of law, without prejudice, etc.

173 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainants,
v.
JOHN F. SHIPP AND OTHERS, defendants.

Motion to set down for hearing on preliminary questions of law, without prejudice, etc.

The Attorney-General calls up this information in contempt and shows the court that the answers of all the defendants are now on file, excepting the answer of Paul Pool, who has not been located and was not served with process and seems to be a fugitive.

The answers in general set up an alibi or deny connection with the mob or knowledge of its formation, and plead not guilty. Certain of the answers also rely upon the contention that this court had no jurisdiction of the Johnson case. The answer of Shipp and his deputies prays that the information be dismissed as against them,

174 because the Circuit Court of the United States had no right or authority to entertain Johnson's petition for habeas corpus, and that consequently the order of the Circuit Court dismissing the petition was not appealable to this court.

These averments and contentions raise the question of the jurisdiction to entertain Johnson's case in the Circuit Court and in this court, and consequently the question of the jurisdiction of this court in this proceeding and other related preliminary questions of law.

The Attorney-General therefore respectfully suggests that the court set the case down for hearing under the information and answers upon these preliminary questions of law, and further suggests that the court shall, if it sees fit, define the nature and scope of these questions for discussion in the briefs and at the oral argument. Further, the Attorney-General expressly states that this application to set the case down for hearing is made without prejudice to the

right of the Government to proceed thereafter as it may be entitled to do and as it may be advised, upon the merits of the case, by taking testimony under the claims of alibi and the pleas of not guilty, thereafter presenting the case for final hearing and determination upon the issues of fact thus made.

The Attorney-General also suggests that the preliminary hearing on the questions of law, for which application is now made, be set for December 3 next at the head of the call for that day, and that
175 in any order which the court may now see fit to make in the premises it will frame the order so as to operate without prejudice to the ulterior progress of the case on the merits.

WILLIAM H. MOODY,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

176 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainants, *v.* John F. Shipp and others, defendants. Motion to set down for hearing on preliminary questions of law, without prejudice, etc. Filed Nov. 12, 1906.

177 And afterwards, to wit, on the 26th day of November, A. D. 1906, a brief for the complainant was filed in the words and figures following, viz:

178 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP AND OTHERS, defendants.

Brief for the United States on preliminary questions of law.

179 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP AND OTHERS, defendants.

Brief for the United States on preliminary questions of law.

STATEMENT.

The court is of necessity well apprized of this original proceeding in contempt to punish a disobedience of its own command. For the

purposes of the present hearing, the facts and pleadings may be stated briefly and informally.

The information sets forth the conviction at Chattanooga, Tenn., in the State court on February 11, 1906, of the negro Johnson, and his sentence to death; his subsequent petition for habeas corpus to the United States Circuit Court, which was heard upon the pleadings and testimony taken, and denied; the remand of him to the sheriff of Hamilton County, Tenn., to be detained for ten
180 days from March 10, 1906, in order to enable him to prosecute an appeal from the order of the Circuit Court if he was so entitled and advised, and thereafter, in default of the prosecution of an appeal within that time, to be further dealt with by the state court under its sentence; the application to Mr. Justice Harlan on March 15, praying for the allowance of an appeal to this court, which was allowed on March 17, and on March 19, on motion in open court by counsel for Johnson, was formally allowed by the court in banc in an order which directed on its face "that all proceedings be stayed and the custody of the said appellant be retained during this appeal." (See also record in case of Ed Johnson, appellant, v. The State of Tennessee, now on file and printed, pp. 1, 50, 51.)

The information also sets forth these further facts upon information and belief: That on the date of the order of this court, namely, on March 19, the clerk of the court notified John F. Shipp, sheriff of Hamilton County, by telegraph, of the entry of the order and its contents, and, specifically, that all proceedings against Johnson were stayed, and that custody of him should be retained by the sheriff pending the appeal; that this telegraphic notice was received by the sheriff before 6 o'clock p. m. on the same day, and that the Chattanooga evening papers of that day published and circulated a full account of the allowance of the appeal and the stay of all further proceedings; that Shipp, as sheriff, and his deputies, all being
181 so advised of the order and being in full charge and control of the county jail in Chattanooga, wherein Johnson was confined under the custody of the sheriff, were informed, and had reason to believe, from reports and rumors conveyed to them, that an attempt would be made that evening by a mob of armed men to force the jail and to take Johnson out and to put him to death by violence, and that, notwithstanding these reports and rumors, the sheriff withdrew the usual guard from the jail, leaving in charge only the night jailer, his deputy, Gibson, and thus and in other ways the sheriff and his deputies evinced a purpose to render it less difficult and dangerous for the mob to carry into effect its unlawful design and purpose of lynching Johnson. The information then proceeds to charge the sheriff and his deputies and the other defendants, naming them all, with a wilful conspiracy to lynch Johnson, and with the intent to show their contempt and disregard for the order of this court, and to prevent the hearing of Johnson's appeal as allowed, and to prevent his exercising and enjoying a right secured to him by the Constitution and laws of the United States, and that in furtherance of this

conspiracy the defendants did do, or aid and abet in doing, the acts by and thru which a mob assembled in Chattanooga on the evening of March 19, 1906, between 9 o'clock and midnight, entered the jail with force and arms, broke open the cell in which Johnson was
182 confined, and violently took him from the jail and to a point a short distance away, and there hanged him by the neck until he was dead.

A rule to show cause was issued upon the information; the answers to the rule plead not guilty in terms or in effect, and deny connection or participation with the mob or with any conspiracy as charged; some of the answers claim an alibi; some of them raise questions of jurisdiction, and in particular and as typical of such preliminary defenses in matter of law, the answer of the sheriff and his deputies sets up—

That the charges, even if true, constitute contempt of the judicial authority of Tennessee only, and not of this court, because Johnson's petition in the Circuit Court did not allege a lack of jurisdiction in the State court to try, convict, and sentence him; because his petition does not allege denial of rights secured by the Constitution of the United States under color of any law or authority of the State, but charges that the denials of right were due to the individual action of officials and other citizens of the State in violation of their duty to the State; because the writ of habeas corpus can not be invoked in a court of the United States to review errors in procedings in a State court, which are cognizable only by the highest court of the State on writ of error. The answer traverses the petitioner's allegations of denial of rights in the State court, and it is contended that the application for habeas corpus to the circuit court was not made in
183 good faith; that the circuit court had no jurisdiction, and that this court had no jurisdiction on appeal.

The issues of fact as to guilt and alibi raised by the answers having been postponed, this hearing deals solely with the preliminary questions of law thus raised.

Of course the question of Johnson's guilt or innocence of the crime charged against him in no way arises on this record; nor is it necessary to discuss the various claims of denial of rights which his petition alleged and which are declared to be false and unfounded. These would be proper matters for consideration and determination on the record in Johnson v. Tennessee, if that case were now a live proceeding in this court.

Johnson alleged, in short, that he had not had a fair trial at the hands of the State, and that his rights as a citizen of the United States under the Constitution had thus been infringed. This was denied, but his petition on its face was sufficient to lead the Circuit Court to entertain his application, and that is enough to superimpose a new and distinct constitutional right, namely, the right of appeal to this court, which is a very important right to be maintained in all cases.

Johnson's complaints were that he was denied the assistance of counsel; that the grand jury and the trial jury were illegally constituted; that he was denied a change of venue and a continuance; that
184 he was compelled to testify against himself under circumstances which revealed a prejudiced juror; that he was denied the right to apply for a new trial or to present a bill of exceptions or to appeal to the Supreme Court of Tennessee. (Rec., pp. 1–6.) These allegations were denied by the answer of the State (Rec., pp. 6–12), and oral testimony was introduced (pp. 13–49).

It is not proper for us to draw any inferences from that record, or comment on it as to the truth of Johnson's complaints in the light of the evidence; that matter is not pertinent or material here, and stands as it was left by his petition, the answer, the replication, the testimony, and the order of the Circuit Court. This court will not now review the facts in that case. Possibly it would not find it necessary to do so if that case were here.

But it can not be assumed that Johnson's charges respecting his trial were unfounded because they were denied or because the answers herein say they were unfounded and were not made in good faith. Testimony was taken on that issue in the Circuit Court. The Circuit Court rendered no opinion, and it does not appear whether the order denying habeas corpus was made because the court deemed the charges untrue, or because, even if true, the court thought there was no valid ground for federal interference.

With his rights under the State law gone, one by one, in whatever way and for whatever reason, until even the right of appeal to the
185 Supreme Court of the State had been lost, it is not strange that Johnson challenged that process and result by invoking his Federal rights, whatever they were. His appeal to the Federal court was in good faith; it was his only recourse to save his life, if possible. If it was technically frivolous and without merit, it was for this court finally so to determine.

ARGUMENT.

I. Preliminary.

Some of the points involved may be generally stated and then dismissed or reserved for more detailed discussion.

If Johnson was entitled to be heard in the Circuit Court on his application for habeas corpus and then in this court on appeal, those are rights secured by the Constitution and laws of the United States. Whatever might have been ultimately decided as to the nature of the other rights which he alleged were denied—whether any or all of them were secured under State law alone or also under the law of the United States—there can be no doubt that the right to initiate habeas corpus proceedings in a Federal court, and the right to come here on appeal if the application is entertained but the writ refused, are Federal rights. A conspiracy such as alleged here would be pun-

ishable then under section 5508, Revised Statutes, as depriving a citizen of a privilege secured to him by Federal law; but
186 whether or not that step shall follow this in due time, that liability can not affect this proceeding.

In the case of Savin, petitioner (131 U. S., 267), it was argued that the offense charged was embraced by the statutes and was punishable only by indictment. But the court said (per Mr. Justice Harlan, at p. 275):

"Undoubtedly the offense charged is embraced by that section [R. S. 5399] and is punishable by indictment. But the statute does not make that mode exclusive, if the offense be committed under such circumstances as to bring it within the power of the court under section 725."

Johnson's application was regularly received and heard by the Circuit Court as such, upon answer, replication, and testimony, and was then denied. That was a final judgment of the Circuit Court. The effect of the final order was exactly the same as if the writ itself had been issued and then discharged. The proceeding herein was equivalent to a rule to show cause (Rec., Johnson case, p. 6), and that leads to a final judgment exactly as if the writ were issued.

The law is that from the final decision of a circuit court on habeas corpus in the case of any person alleged to be restrained of his liberty in violation of the Constitution or of any law or treaty of the United States an appeal may be taken to the Supreme Court (sec. 763, Rev. Stat.; sec. 764, as amended by the act of March 3, 1885, 23 Stat.,
187 437). This is still a part of the existing law; and, furthermore, Johnson's appeal was within section 5 of the Circuit Court of Appeals act, because it involved the construction or application of the Constitution of the United States (Cross v. Burke, 146 U. S., 82; Ex parte Lennon, 150 U. S., 393; Craemer v. State, 168 U. S., 124).

It always rests within the sound discretion of a court to entertain and hear an application for habeas corpus, and then a concrete right to be heard on appeal supervenes, altho the application is heard only to be denied. The defendants seek to show that the habeas corpus proceedings were not in good faith, because the Federal court promptly held that there was no ground for Federal interposition. But that makes no difference. The situation is similar to that in this court when it is held that the court takes and retains complete jurisdiction so long as necessary merely to decide that it has no jurisdiction; and such control and jurisdiction at the threshold, until jurisdiction is deliberately denied on mature consideration, are a protection to every petitioner or appellant. (See post.)

It has been decided so often by this court that there is no right to a jury trial in contempt cases that it is only necessary to cite the decisions (Eilenbecker v. Plymouth County, 134 U. S., 31, citing Ex parte Terry, 128 U. S., 289; Ex parte Savin, 131 U. S., 267; Ex
188 parte Cuddy, 131 U. S., 280). One sentence from the opinion in the case of Eilenbecker v. Plymouth County may be quoted:

"If it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it."

In the case of Interstate Commerce Commission v. Brimson (154 U. S., 447, 489), the court said: "Surely it can not be supposed that the question of contempt of the authority of a court of the United States, committed by a disobedience of its orders, is triable of right by a jury."

See also In re Debs (158 U. S., 564), and the many authorities therein cited.

Compare the jurisdiction and summary power to strike the name of an attorney from the roll, altho the offense was a crime by state law for which the offender was liable to be indicted and convicted. The proceeding itself is due process of law, and indictment and trial by jury are not required. See the learned opinion by Mr. Justice Bradley in Ex parte Wall (107 U. S., 265), which is an interesting authority here because the offense was the engaging in, advising, and encouraging a riotous gathering which lynched a certain criminal, the attorney "thereby showing such an utter disregard and contempt for the law which, as a sworn attorney, he was bound to support as shows him to be totally unfitted to occupy such position."

189 II. The Circuit Court had jurisdiction of Johnson's case and this court had jurisdiction on appeal.

Section 14 of the judiciary act of 1789 (1 Stat., 81) authorized the courts of the United States to issue writs of habeas corpus, with the proviso that such writs "shall in no case extend to prisoners in jail, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify." Later statutes (act of Mar. 2, 1833; act of Aug. 29, 1842; act of Feb. 5, 1867) extended the authority of the courts in this respect, and now section 753, Revised Statutes, drawn from these acts, provides:

"The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or
190 order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify."

Section 755 provides that the court, or justice, or judge to whom such application shall be made shall forthwith award the writ,

"unless it appears from the petition itself that the party is not entitled thereto."

The power thus granted to United States courts has been repeatedly held by this court to extend to prisoners in custody under the authority of a State. The leading case on the subject is Ex parte Royall (117 U. S., 241), where a prisoner who had been indicted for selling a coupon without a license, under a statute of Virginia, applied to the Circuit Court before trial for a writ of habeas corpus, claiming that the state law was unconstitutional. The petition was dismissed upon the ground that the Circuit Court was without jurisdiction to discharge the prisoner from prosecution, and that judgment was affirmed by the Supreme Court. Mr. Justice Harlan, delivering the opinion of the court, said (pp. 252–253):

"This court holds that where a person is in custody, under process from a state court of original jurisdiction, for an alleged offence against the laws of such State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United
191 States, the Circuit Court has a discretion whether it will discharge him upon habeas corpus in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the state court shall have finally acted upon the case, the Circuit Court has still a discretion whether, under all the circumstances then existing, the accused, if convicted, shall be put to his writ of error from the highest court of the State or whether it will proceed, by writ of habeas corpus, summarily to determine whether the petitioner is restrained of his liberty in violation of the Constitution of the United States."

This ruling has been repeatedly approved. (See In re Terry, 128 U. S., 289; In re Loney, 134 U. S., 372; In re Neagle, 135 U. S., 1; In re Wood, 104 U. S., 278; Cook v. Hart, 146 U. S., 183; In re Frederich, 149 U. S., 70; New York v. Eno, 155 U. S., 89; Whitten v. Tomlinson, 160 U. S., 240; Baker v. Grice, 169 U. S., 284; Tinsley v. Anderson, 171 U. S., 101; Davis v. Burke, 179 U. S., 399.)

An examination of these authorities shows that while the circuit and district courts undoubtedly have the power to issue writs of habeas corpus in behalf of state prisoners, they are not bound to discharge every such prisoner, and they are to proceed under a sound discretion, having in view the particular circumstances of each case and the relations existing between state and federal tribunals;
192 that there are certain principles guiding their discretion which are stated as follows in Ex parte Royall (117 U. S., at p. 251):

"We can not suppose that Congress intended to compel those courts by such means to draw to themselves, in the first instance, the control of all criminal prosecutions commenced in state courts exercising authority within the same territorial limits, where the accused claims that he is held in custody in violation of the Constitution of the United States. The injunction to hear the case summarily, and thereupon 'to dispose of the party as law and justice require' does

not deprive the court of discretion as to the time and mode in which it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations existing under our system of government between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution;" that in certain cases of peculiar urgency the courts have interposed by writ of habeas corpus and discharged the prisoner while under commitment by the state authorities and before trial in the State courts (Wildenhuss' case, 120 U. S., 1; In re Neagle, 135 U. S., 1; In re Loney, 134 U. S., 372); but that, except in such urgent and exceptional cases, United States courts will not dis-
193 charge the prisoner in advance of a final determination of his case in the state courts; and even after such a final determination they will generally leave him to the usual and orderly course of proceeding by writ of error from the Supreme Court of the State (Ex parte Royall, supra; Ex parte Fonda, 117 U. S., 516; In re Duncan, 139 U. S., 449; and other authorities cited in Whitten v. Tomlinson and Davis v. Burke). As was said by Justice Brown in the last-mentioned case (179 U. S., 399, 402):

"It is recognized, however, that the power to arrest the due and orderly proceedings of the state courts, or to discharge a prisoner after conviction, before an application has been made to the Supreme Court of the State for relief, is one which should be sparingly exercised, and should be confined to cases where the facts imperatively demand it. While the power to issue writs of habeas corpus under Rev. Stat., sec. 753, nominally extends to every case where a party 'is in custody in violation of the Constitution, or of a law or treaty of the United States,' it is not every such case where the interference of the Federal court is demanded, particularly where the state court is executing its own criminal laws, and is asserting a jurisdiction which does not reside elsewhere, to try an accused person for a violation of such laws. The state courts are as much bound as the Federal courts to see that no man is punished in violation of the Con-
194 stitution or laws of the United States; and ordinarily an error in this particular can better be corrected by this court upon a writ of error to the highest court of the State than by an interference, which is never less than unpleasant, with the procedure of the state courts before the petitioner has exhausted his remedy there."

See also generally In re Burrus, 136 U. S., 586.

The facts seemed to "imperatively demand" Federal interposition in this case, not to discharge, but to consider the petition, because the opportunity to apply to the Supreme Court of the State was gone.

In view of these settled principles it is not possible to maintain that the Circuit Court was without jurisdiction, and that Johnson's case could only have gone to the Supreme Court of Tennessee. It was for the Circuit Court to say whether or not the appeal to the

Constitution of the United States was a substantial defense. It has been distinctly and repeatedly decided that because the offense is against the State alone and has been adjudged under state laws exclusively, and because the usual course on review is by writ of error from the highest court of the State, and because state tribunals regard and apply the guaranties of the Federal Constitution, are not conclusive reasons why the courts of the United States should not interpose, not only after conviction but even before trial. The
necessity of propriety of interposition in any particular case
195 is necessarily committed to the discretion and determination
of the Federal Court, subject to review here. And the Circuit Court had as complete judisdiction, for the purpose and with the result of deciding that the constitutional claim could not avail, as if it had decided otherwise and had issued the writ and then discharged the prisoner.

A court is empowered to take a case altho it may not retain it—that is to say, altho it may consider the claim made unfounded. It has jurisdiction to consider and decide either way. The objection here to the jurisdiction of the lower court means nothing more when analyzed than that a case when presented to a court must be impregnable or it is no case at all. Or, putting the matter in a different way, the objection amounts to the proposition that if upon deliberate examination the court concludes that the prayer or claim is without merit—that is, in a case like the present, that the jurisdictional claim of alleged violation of Federal law is without merit, then the court was without jurisdiction ab initio. This conception is contrary to the essential idea of the judicial function, which is the considering and deciding of doubtful matters. It is in this view of the judicial function that the court has jurisdiction to decide that it has no jurisdiction; the court takes and retains complete jurisdiction until
it concludes that it has none. Manifestly this is true of any
196 case. That is enough to bring a petitioner safe within the
shield of the court's power until the conclusion is announced, and, if adverse to the petitioner, until the court's mandate is thereupon issued and received and proceeded with to the surrender of the petitioner to the State.

What does the court mean when it says that the courts of the United States are not bound to discharge every prisoner held in custody under the authority of a State (Whitten v. Tomlinson, 160 U. S., 231, 240)? That language is a complete answer to the defendants' objections to the jurisdiction of the Circuit Court over Johnson, and to all such implications in those objections which we have just been considering; for the words and the thought obviously and necessarily mean that jurisdiction below is not restricted to an undoubted and palpable violation of the Constitution, but attaches and holds in doubtful cases. The Circuit Court is not bound to discharge every such prisoner, because it may and does remand; and that means of course that it may validly take jurisdiction of a case where the claim of violation of federal right is not established.

In re Burrus (136 U. S., 586, 591) expresses the same thought, viz: "It is true that perhaps the court or judge who is asked to issue such a writ need not be very critical in looking into the petition or application for very clear grounds of the exercise of this jurisdiction."

197 It is well to recall the statutes at this point. "From the final decision of such Circuit Court an appeal may be taken to the Supreme Court" "in the case of any person alleged to be restrained of his liberty in violation of the Constitution or of any law or treaty of the United States" (secs. 763, 764, R. S.; act of Mar. 3, 1885, 23 Stat., 437). It should also be noted that the answer of the State to Johnson's petition did not challenge the jurisdiction of the Circuit Court nor refer to that matter directly or indirectly (Johnson record, pp. 6–12).

As to this court's jurisdiction we have already touched upon the matter. It is difficult to conceive how the proposition can be denied or challenged. If the Circuit Court has jurisdiction over original proceedings in habeas corpus, then either party has the right to bring the case here. It would seem to be a matter of course and of right under the statutes; but however that may be, in this case a special allocatur was granted by the presiding justice and then by the court. It may indeed be said, with deference, that Mr. Justice Harlan first and the court afterwards had no choice whatever but to allow the appeal. Justice Harlan's allowance is exprest to be "pursuant to the statutes of the United States." (Rec., Johnson case, p. 50.)

198 Apparently no one has ever thought of disputing the jurisdiction of this court on appeal in such a case involving constitutional grounds, if the Circuit Court took jurisdiction. The right of appeal here follows a final judgment in the court below as surely as day follows night. Certainly no one would challenge the jurisdiction of this court if the Circuit Court had jurisdiction, and accordingly the defendants here deny the jurisdiction of this court simply as a corollary to their contention that the Circuit Court did not possess jurisdiction. But the jurisdiction of this court is not dependent upon contentions, and it has jurisdiction to take the case and retain it for final determination, whether it turns out that the Circuit Court had jurisdiction or not.

It may be confidently stated that in no case of appeal on habeas corpus from a decision of the Circuit Court arising under either state or federal laws, and whether the jurisdiction of the Circuit Court was or was not in question, has any doubt been suggested as to the jurisdiction of this court on appeal.

Whether this court in such a case should affirm or reverse the judgment of the court below, that would be in either event tacitly to affirm that court's jurisdiction and its own. When any case in this court fails for lack of jurisdiction, either in the court below or here, that cause and effect are made plain by the judgment here, either by dismissal for lack of jurisdiction in this court, or by remanding

199 the case to the court below with instructions to dismiss the petition or complaint on the ground of lack of jurisdiction there.

Now it is certain that in no instance has this court dismissed a case of habeas corpus brought to arrest a prosecution in a state court or the execution of the judgment and sentence of a state court because of the alleged violation of rights under the Constitution or laws of the United States, on the ground of lack of jurisdiction in the Circuit Court. Altho the court has laid down rules of guidance and caution for the Circuit Courts which do not limit their jurisdiction, but only direct and restrain its exercise, it has never held that the discretion to entertain a petition was wrongly exercised or that the inferior court proceeded without jurisdiction.

On writ of error from the highest court of a State this court sometimes affirms the judgment, but sometimes dismisses the writ of error on the ground that no constitutional or other Federal question is really and substantially involved (Brown v. New Jersey, 175 U. S., 172; Spies v. Illinois, 123 U. S., 131; Craemer v. Washington, 164 U. S., 704); but in cases of habeas corpus from Circuit Courts involving the authority of state courts, the court has invariably affirmed or reversed the judgment below, thus sustaining the jurisdiction of the Circuit Court. Always a Federal question was necessarily alleged and was sufficiently involved for jurisdictional purposes.

200 Besides, this court has yet to determine that the Circuit Court rightly refused to issue the writ or had no jurisdiction to do so, and even if it did so determine, that could only be upon the assumption that it had jurisdiction of the case on appeal. In other words, lack of jurisdiction in the Circuit Court to issue the writ would not mean lack of jurisdiction in this court to entertain and act upon the appeal. Ex parte Royall illustrates the point. There the Circuit Court dismissed the petition because it was without jurisdiction to discharge the prisoner from prosecution; but this court took jurisdiction on appeal. It did not decide that the Circuit Court had no jurisdiction; on the contrary, by affirming the judgment and thereby holding that the action of the Circuit Court in discharging was correct, it affirmed its jurisdiction. The form of the Circuit Court's dismissal it son. what misleading—"without jurisdiction to discharge," etc.; but if it had been held here strictly that the Circuit Court was without jurisdiction, this court would nevertheless have had full jurisdiction of the entire case for that purpose and up to that point.

If Johnson had been permitted to live, a motion to dismiss his appeal or affirm might have been granted on the ground that the Circuit Court had decided rightly in denying his application for the essential reason that no case for federal interposition had been made. But this would not mean that the court regarded the appeal to the Constitution of the United States as frivolous. Whether

201 it was legally frivolous—that is, not well founded or set up for

delay merely and not in good faith—would be one of the matters to be determined by this court. The court promptly passes upon such cases involving state laws and convictions, but does not readily lean to the suggestion of frivolousness. On the whole, it may be said that when in any case the court is asked to dismiss or affirm on the ground that the Constitution is not really involved and the appeal to it is a mere pretense, the court is not inclined to yield to the suggestion, and is apt to postpone that question to the hearing on the merits, and then often ignores it.

In short, it is perfectly certain that the files of this court are full of cases, civil and criminal, ranging in importance from capital cases to small money demands, from the pleadings and judgments of which it is evident that when a claim under the Constitution of the United States is properly alleged, however unfounded it may turn out to be, this court proceeds deliberately and considers that claim and retains that case in its grasp and under its power in all respects until this court has rendered its final decision and judgment, either to dismiss or to affirm or to reverse.

The opposing contention is in no way strengthened by the immaterial suggestion that Johnson's complaints were against individuals and not against state ordinances or authority. That idea might be challenged on the facts, and of course was one of the questions before the Circuit Court. But if this suggestion were mani-
202 festly founded in verity, the reasons for the distinction between illegal state laws or action and the illegal acts of individuals with respect to the fourteenth amendment (cf. secs. 5508, 5510, Rev. Stat.) are not applicable to this case. We have no occasion herein to argue the proposition that upon the allegations of his petition Johnson was denied the equal protection of the laws and due process of law under color of state authority. We stand on the single proposition, free from all such suggestions and complications, that under the authorities cited the Circuit Court and this court had full jurisdiction of Johnson's case.

III. The power and jurisdiction of the Supreme Court of the United States to punish contempts of its authority.

This appears to be the only original proceeding in contempt filed in this court. This is the first time in the history of the country and of the court that an order of the court has been disobeyed and its authority contemned. This court preeminently represents and effectuates the judicial branch of power under our Government, and it is more important to sustain its paramount power and dignity than that of any other judicial authority. It is to be certainly assumed, then, that the court will apply in the vindication of its own authority the doctrines which it has laid down in cases coming within its appellate jurisdiction as to the authority of the lower federal courts
203 over contempts. We do not need to go back to the common-law authorities on the absolute and inherent power in all

superior judicial tribunals to punish contempts; this court has stated in plain and comprehensive language the guiding doctrines (infra).

It is certainly a fundamental principle from time immemorial that flat disobedience by anyone within the territorial jurisdiction of the clear and positive order of a court having jurisdiction of the matter is a flagrant contempt. Here the vital fact appears thru the allegations of conspiracy that an order of the court duly promulgated was ignored and set at naught by the defendants. As to precedents for the order, it is understood to be the necessary effect in such cases that the taking or the allowance of an appeal operates as a supersedeas, staying all proceedings under state process and authority pending appeal, and therefore the allowance or order of appeal ordinarily does not specifically direct a stay. (See rule 34.) The state authorities and all other persons bow to the intervening national power, and wait. But here the stay was a part of the order on its face, and that makes the contempt so much the more flagrant.

The following are declarations of the court on the inherent power over contempts, gathering up the settled principles of the common law:

"The power to punish for contempts is inherent in all courts.
204 Its existence is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power. (Per Mr. Justice Field in Ex parte Robinson, 19 Wall., 505, 510.)"

In Ex parte Terry (128 U. S., 289, 302, 303) Mr. Justice Harlan, speaking for the court, reviews with entire approval the numerous authorities in this court and in the state courts sustaining the inherent power to punish for contempts, citing the passage from Ex parte Robinson above and, among other cases, Anderson v. Dunn (6 Wheat., 204, 227), which declared that "Courts of justice are universally acknowledged to be vested by their very creation with power to impose silence, respect, and decorum in their presence and submission to their lawful mandates." Among the state authorities cited was Cooper's case (33 Vermont, 253, 257), wherein it was said that "The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from necessity: implied because it is necessary to the exercise of all other powers." (See also Savin, petitioner, 131 U. S., 267, 274; Eilenbecker v. Plymouth Co., 134 U. S., 31, 36, 37;
205 Interstate Commerce Commission v. Brimson, 154 U. S., 447, 489; In re Debs, 158 U. S., 564, 595, 596.)

This court is the great court of the United States. It was created eo nomine by the Constitution, and there the broad outlines of its power and jurisdiction, original and appellate, were marked out. The creation of the inferior courts was left to Congress. There is an essential difference, then, between the Supreme Court of the United

States and all other courts of the United States. First, because this court is preeminent as speaking the last word for the judicial power and carrying into final effect the judicial checks and balances on the other departments of government; and, second, because this court looks to the Constitution, not only for its origin in general, but for its express creation, while the inferior federal courts look to Congress for their actual being, functions, and jurisdiction. The judicial power, of course, operating thru its three well-known branches of law, equity, and admiralty, was not created by the Constitution, but was well understood and existed long before the Constitution was thought of; but the Constitution vested that power in this court by name and in other courts to be established, and stated to what cases the power shall extend. The office of Congress, under the Constitution, is to distribute and not create judicial powers. The distribution to the
Supreme Court and by anticipation to the lower courts was
206 accomplished by the Constitution itself, which also, in large
measure, mapped out the jurisdiction of the courts, and Congress finally ordained and established the inferior courts, applying the power, specifying the jurisdiction in detail, and prescribing the particular cases upon which the power and jurisdiction should operate.

When Congress legislates on the judiciary by creating and organizing inferior courts and by prescribing general rules as to the constitution of the courts, jurisdiction, procedure, etc., it generally deals with this court by name, and there is no doubt that this court is embraced in the law (Rev. Stat., Title XIII, Judiciary, ch. 11, Supreme Court, Jurisdiction). It must be admitted, however, that regarding "Provisions common to more than one court or judge" (ch. 12), the exclusive jurisdiction of "the courts of the United States" (sec. 711) must embrace the Supreme Court in that category, because the seventh paragraph of the section includes controversies where a State is a party, of which the Supreme Court has original and exclusive jurisdiction, and because other suits provided for in that section are within the appellate jurisdiction of the Supreme Court, and of course the justices of this court are embraced within the phrase "any judge of any court of the United States" in section 714. Sometimes the statute enumerates the several courts, including this court; for example, relative to the power to issue writs (sec. 716). But in
207 the present instance, at least, the phrase "courts of the United
States" seems to refer to the inferior courts chiefly or solely and not to this court. Section 725, which we are about to set forth and discuss and which restricts the power of the courts of the United States to punish for contempt, is essentially connected with the preceding section and the following section. In section 724 it is provided that "in the trial of actions at law the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power which contain evidence pertinent to the issue." Section 725 then recognizes but restricts the power of "the said courts" to punish contempts of their

authority; and section 726 provides: "All of the said courts shall have power to grant new trials in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law."

Now, cases are conceivable, of course, where this court, under section 724, as a court of the United States and a court of chancery, might have occasion to compel the production of evidence, but it is also obvious that the intention of that statute relates chiefly at least to the inferior courts of the United States; and this view of it finds strong confirmation in section 726, which certainly does not mean to include this court in the provision that all of the said courts shall have power to grant new trials. This court can, of course,
208 grant rehearings, and it can order new trials in the lower courts by a reversal and venire facias de novo. But that is not what the section means. It refers to the nisi prius courts. Consequently, we contend that altho this court is necessarily a court of the United States in the general meaning of that term, because it is the greatest court of the United States, yet it is not one of the courts of the United States within the meaning of section 725, Revised Statutes, limiting the power to punish contempts. The power of this court to punish contempts rests upon its inherent power under the common law and as the highest court of the land clothed with unexampled dignity and authority by the Constitution itself.

We are bound to say, however, that the judiciary act of 1789 (1 Stat., 73, 76, 78, 80, 83) provided for the jurisdiction of the district courts (sec. 9), of the circuit courts (sec. 11), of the Supreme Court (sec. 13), and then in section 14, now section 716, Revised Statutes, gives the power to issue writs of scire facias, habeas corpus, etc., to "all the before-mentioned courts of the United States;" and section 15 (now sec. 724, R. S.) specifies "all the said courts of the United States," as does section 17 (now sec. 726, R. S.) upon the matter of new trials. It should also be pointed out that the germ of section 725, Revised Statutes, is in section 17 of the act of 1789, following the provision as to new trials, the exact language being—
209 "That all the said courts of the United States shall have power to grant new trials, in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law; and shall have power to impose and administer all necessary oaths or affirmations, and to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same; and to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States.

But at all events, and however this point may be regarded on a comparison of the differing statutory phrases and language, the court has intimated the same doubt which is now exprest. Before citing that authority we trace the further development of the statute.

The act of 1831 (4 Stat., 487) was "declaratory of the law concerning contempts of court." It developed section 17 of the act of 1789, as follows:

"That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts,
or so near thereto as to obstruct the administration of justice,
210 the misbehavior of any of the officers of the said courts in
their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts. (Sec. 1, act of 1831.)

Section 725 combines both the preceding laws, but is in substantially the same form as the act of 1831, providing that—

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: Provided, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

In Ex parte Robinson (19 Wall., 505, 510) the court said, referring to the act of 1831:

"The act in terms applies to all courts. Whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a
211 matter of doubt. But that it applies to the circuit and district courts there can be no question. The courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence or subsequent acts extending or limiting their jurisdiction."

This remark must, of course, be regarded as obiter, since the authority of this court in the matter of contempts was not in question in Ex parte Robinson. But it suggests the reasons why this court in the exercise of its inherent powers derived from the Constitution can not be limited by the subsequent restrictions of an act of Congress professing to apply to all courts of the United States. Such an act of Congress controls the courts of its own creation, but not this court if thereby its organic authority and jurisdiction under the Constitution are curtailed.

The opinions in In re Tampa Suburban R. R. Co. (168 U. S., 583) and In re Vidal (179 U. S., 126) suggest perhaps that the inherent general power of the court to issue writs may go further than the statutory authority. The statutory authority, however, is invoked in those cases for the refusal to issue the writ, rather than rejected.

But we have no doubt that in any proper case the court would hold unhesitatingly that its general and inherent authority, of whatever nature, does not need any statutory grant of power and is not subject to statutory restrictions.

212 But if section 725 shall be held to apply to this court, the present case is included within its very language. We are not now concerned with contempt committed in the face of the court or so near as to be constructively in its presence (Ex parte Terry, 128 U. S., 289, 307; Savin, petitioner, 131 U. S., 267, 277, 278; 4 Bl. Com., 286); this is one of the "matters that arise at a distance," and accordingly an instant attachment did not issue but a rule to show cause. But altho a matter arising at a distance and not a question of disturbance or decorum in or near the presence of the court, it is the vital matter of refusing to obey the court's command, which is as serious at the remotest corners of the country as in the court room. The language of the statute is that the power to punish extends to "the disobedience or resistance * * * by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

In Eilenbecker v. Plymouth Co. (134 U. S., 31, 38) this language was emphasized, and the court said:

"It will thus be seen that even in the act of Congress intended to limit the power of the courts to punish for contempts of its authority by summary proceedings, there is expressly left the power to punish in this summary manner the disobedience of any party to any lawful writ, process, order, rule, decree, or command of said court."

213 That was a case coming up from a state court, and the precise point involved was whether a jury trial was required, and the opinion goes on to state that the statute was only designed for the courts of the United States, but that previous opinions of the court show conclusively the ample and summary power inherent in courts generally to inflict punishment for disobedience to their writs and orders without the interposition of a jury. The citation of the act in that case emphasizes the proposition that even where the power to punish in contempt is restricted, the necessary and fundamental power to enforce obedience to lawful orders or to punish for disobeying them is left untouched. And of course the learned justice who delivered the opinion in that case did not intend by using the word "party" alone, and not repeating the entire enumeration of the statute, to intimate any doubt whatever that disobedience by any person whatever was embraced within the power of punishment.

In Debs's case (158 U. S., 564, 594, 595) the court says:

"The power of a court to make an order carries with it the equal power to punish for a disobedience of that order."

It will be noticed that the revision omitted the word "summary" which appeared in the act of 1831. Upon that omission the court has observed (In re Savin, 131, U. S., 267, 276):

"And although the word 'summary' was for some reason
214 not repeated in the present revision, which invests the courts

of the United States with power 'to punish by fine or imprisonment, at the discretion of the court, contempts of their authority' in certain cases defined in section 725, we do not doubt that the power to proceed summarily for contempt in those cases remains as under the act of 1831 with those courts. It was in effect so adjudged in Ex parte Terry, above cited."

Of course this shocking occurrence, conceived in lawlessness and revenge, carried on by violence, and ending with murder at the hands of a mob, was an offense against the State as well as against the United States and this court. But the same act may be a crime both against a State and the United States, and the United States has full power to punish whether the State does or not. (Cross *v.* North Carolina, 132 U. S., 131; Pettibone *v.* United States, 148 U. S., 197; Crossley *v.* California, 168 U. S., 640.)

There can be no doubt, then, we contend, that in every aspect this case is firmly before the court. On the point of jurisdiction in habeas corpus with reference to Johnson's case the circuit court had jurisdiction and this court had jurisdiction. This court has complete power and jurisdiction to punish summarily contempts of its authority. The court's express command was disobeyed, and in any aspect, on the ground of inherent power and constitutional authority
215 unrestrained by statute, or within the restriction of section 725, this court may and should inflict due punishment for that disobedience.

WILLIAM H. MOODY,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

WASHINGTON, *November 24, 1906.*

216 And afterwards, to wit, on the 3d day of December, A. D. 1906, briefs for the defendants were filed in the words and figures following, viz:

217 In the Supreme Court of the United States, October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

Brief for J. F. Shipp, sheriff, and his deputies, defendants, on preliminary questions.

JUDSON HARMON,
For J. F. Shipp, Sheriff, et al.

CLIFT & COOKE,
ROBERT PRITCHARD,
Of Counsel.

218 In the Supreme Court of the United States, October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
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Brief for J. F. Shipp, sheriff, and his deputies, defendants, on preliminary questions.

STATEMENT.

The charge in the information is this:

One Ed Johnson, having been convicted and sentenced by a court of Tennessee, whose jurisdiction over the accused and the offense is not questioned, petitioned the United States circuit court for that State for a writ of habeas corpus on the ground, among others, that "he had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution." (Inf., p. 2.)

219 At the hearing upon the petition, answer, and oral testimony the petition was dismissed. Thereupon, before the day fixed in the sentence for the infliction of the penalty, Johnson secured from one of the justices of this court, and also from the court, the allowance of an appeal from said judgment of the circuit court. The order allowing the appeal provided that "the custody of said appellant be retained pending this appeal." (Inf. 2–4.)

Defendant Shipp, the sheriff in charge of said Johnson, and his deputies, being advised of the allowance of said appeal and said order and having reason to believe that an attempt would be made by a mob to take said Johnson and put him to death, caused the customary guard to be withdrawn from the jail where said Johnson was confined, in order to make less difficult and dangerous the execution of such design, and also conspired and confederated with the other defendants unlawfully to take and lynch said Johnson, which was done.

All this was "for the purpose of preventing this honorable court from hearing the appeal of the said Ed Johnson, allowed by this court, as aforesaid, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States," "and in order to show their contempt and disregard for the said order of this honorable court." (Inf. 7, 8, 10.)

The first paragraph of the answer of said Shipp, sheriff, and his deputies to the rule to show cause why they should not be punished for contempt is, in substance, that neither on the averments of the petition of said Johnson for a writ of habeas corpus nor on the proof taken on the hearing was his case one of which said Circuit

Court of the United States had jurisdiction, nor one which was appealable to this court; but on the contrary it clearly appeared on the pleadings and proof that said Johnson was not "in custody
220 in violation of the Constitution or of a law or treaty of the United States" (R. S., sec. 53), so that the writ of habeas corpus did not extend to him, being in jail (id.); and that, as it likewise clearly appeared that the case was not one "that involves the construction or application of the Constitution of the United States" (act of March 3, 1891, sec. 5, 1 supp., p. 903), there was no right of appeal to this court; and that consequently this court did not acquire jurisdiction of said case and should not proceed to inflict punishment as for contempt for the acts charged, but should leave them to be dealt with as crimes.

The case is now set for hearing on the information and said plea. The averments of each are taken as true for present purposes as to matters of fact well pleaded, the court to take notice of the record in Johnson vs. Tennessee, on which the appeal was allowed.

ARGUMENT.

While the appellate jurisdiction of this court is derived from the Constitution, it is "with such exceptions and under such regulations as Congress shall make." (Art. III, sec. 2.)

National Exchange Bank vs. Peters, 144 U. S., 570.
Cross vs. United States, 145 U. S., 571.
In re Glaser, 198 U. S., 171.

It will be admitted that the right of appeal here must be found, if at all, in the fifth clause of section 5 of the Circuit Court of Appeals act, supra, "in any case that involves the construction or application of the Constitution of the United States."

In re Lennon, 150 U. S., 393, 398.

In M. C. & L. R. Co. vs. Swan, 111 U. S., 379, the court, by Mr. Justice Matthews, said:

221 "But the rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it."

Quoted in Kentucky vs. Powers, 201 U. S., at p. 35, see also id. p. 24.

We may surely assume that this court will the more willingly inquire into its jurisdiction in a case when it is asked to inflict personal punishment for disregard of its own order only.

We assume that it will hardly be contended that the mere allowance of an appeal is sufficient to give the court jurisdiction of a case which from its nature is not appealable. Such action is pro forma only, and as it is necessarily had in every case the jurisdiction of the court would always be established by an ex parte order.

If the principle involved here were that of immunity of judges from liability for acts done judicially, as, for instance, if by the order of the justice who allowed the appeal or that of the court itself Johnson had been taken into Federal custody, as he might have been under paragraph 2 of Rule 34, the making of the order would be judicial action, jurisdiction or not, because, as the court said by Mr. Justice Field in Bradley vs. Fisher, 13 Wall., 335, 352:

"No personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his juris-
222 diction or of the jurisdiction of the court held by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject-matter is invoked. Indeed, some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction, or that of the court held by him, or the manner in which the jurisdiction shall be exercised. And the same principle of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject and person, applies in cases of this kind (i. e., when there is not jurisdiction), and for the same reasons."

See also Austin vs. Vrooman, 128 N. Y., 229, by Judge now Mr. Justice Peckham, and Grove vs. Van Dyne, 44 N. J. L., 654.

So it might be, too, with the marshal or other officer of this court if he had confined Johnson by virtue of such an order, notwithstanding lack of actual jurisdiction to make it. Horton vs. Hendershot, 1 Hill, 119.

But as was held in the case last named:

"The rule which justifies the officer, when acting under such process as I have mentioned, is one of protection and not of assault. It is a shield, but not a sword. The officer when sued may defend under such process, but he can not build up a title upon it which will enable him to maintain actions against third persons."

The same rule applies, of course, to the court or judge.

This proceeding is of a purely criminal character, both in form and in fact, and not of a civil or remedial character whose purpose is to secure or enforce the rights of a party.

Bessette vs. W. B. Conkey Co., 194 U. S., 324–328.

It is proposed to make the order allowing the appeal and the alleged acts of the defendants in preventing the court from
223 hearing the case on appeal the basis of affirmative penal action against them, so that the question is fundamental whether the

case in which the order was made was one which in fact came within the limited appellate jurisdiction of the court, whether Johnson really had the right, of which the defendants are charged with depriving him, to have this court hear his case; because, if an order be made without jurisdiction, there can be no punishment for contempt.

Ex parte Rowland, 104 U. S., 604–612.
Ex parte Fisk, 113 U. S., 713.
In re Sawyer, 124 U. S., 200.

It has sometimes been suggested that a person to whom an order is directed will not be heard to question the authority of the court to make it, when he is arraigned for disobedience, as in the McKenzie Contempt Cases, 106 Fed., 788; 109 Fed., 971. This point seems to have been negatived by inference in In re McKenzie, 180 U. S., 536, the court holding that the orders were not necessarily void, and refusing, for that reason only, to review the action of the Circuit Court of Appeals. But this suggestion has always been by way of admonition only, because we know of no case where it was made in which it was ever the basis of punishment for contempt, the finding having always been that the order disobeyed was in fact authorized. And in such cases generally, if not always, the proceeding has had for its object the suppression of a continuing disobedience and not mere punishment for past acts.

Nor is this proceeding one for the purpose of protecting or vindicating the dignity of the court generally, as in cases of disturbance in its presence or hearing, reflection on its motives, etc., where no question of jurisdiction in a particular case can arise.

Neither is it one for the exercise of disciplinary power over
224 officers of the court, because these defendants are officials of the State of Tennessee, not of the United States.

In short, when a proceeding is strictly and solely punitive, like this, and the penalty may include imprisonment, we submit that this court, whose standards of personal liberty are so high, should not be controlled by any general theories of discipline or dignity, but only by the result of the inquiry whether the order, disobedience to which is the basis of the proceeding, was made in a case to which its jurisdiction, as limited by law, extended. It surely is sufficient to maintain the authority of the court to impose on all persons the risk of such decision, without denying the right to ask that it be made. And the power to decide whether the case be one of which the court has jurisdiction can not properly be held to be the equivalent of actual jurisdiction for purposes purely penal, especially when the jurisdiction of the court is limited and not general.

The only question, therefore, is whether Johnson's proceeding in habeas corpus in the Circuit Court did or did not in fact constitute a "case that involves the construction or application of the Constitution of the United States." If it did, this court had appellate jurisdiction of it and should proceed to inquire whether its order has been disobeyed. If it did not, this court had no jurisdiction of it and should

now so hold for the purposes of this proceeding, just as it would have done if the State of Tennessee had raised the question on the attempted appeal. That State invokes the judgment of the court on it now by its officers whom it is proposed to punish by imprisonment or otherwise, thereby affecting their ability to discharge their official duties.

The court has many times pointed out the tests by which it will determine whether or not a case involves the construction or application of the Constitution of the United States.

225 In Rogers vs. Peck, 199 U. S., 425, the court said by Mr. Justice Day, p. 433:

"The extent of the right of federal courts to interfere by a writ of habeas corpus with proceedings of courts and other authorities of a State is carefully defined by statute."

And at p. 434:

"The reluctance with which this court will sanction federal interference with a State in the administration of its domestic law for the prosecution of crime has been frequently stated in the deliverances of the court upon the subject. It is only where fundamental rights specially secured by the Federal Constitution, are invaded that such interference is warranted."

The case must involve the construction or application of the Constitution "within the intent and meaning of this statute," In re Lennon, 150 U. S., 393, 399, supra, which, as the case shows, means that there must be a bona fide constitutional question which must have controlled the judgment. See also,

Carey vs. Houston & Texas Central Ry., 150 U. S., 170, 181.

In the latter case the court said by Mr. Chief Justice Fuller, p. 181:

"It is argued that the record shows that complainants had been deprived of their property without due process of law, by means of the decree attacked, but because the bill alleged irregularities, errors, and jurisdictional defects in the foreclosure proceedings, and fraud in respect thereof and in the subsequent transactions, which might have enabled the railroad company upon a direct appeal to have avoided the decree of sale, or which, if sustained on this bill, might have justified the circuit court in setting aside that decree, it does not follow that the construction or application of the Constitution of the United States was involved in the case in the sense of the statute."

226 Also, Carter vs. Roberst, 177 U. S., 496.

C. H. & D. Ry. vs. Thiebaud, 177 U. S., 615, 620.

In Whitten vs. Tomlinson, 160 U. S., 231, 240, 242, 247, it was held that facts alleged in a petition for habeas corpus can be taken as true only when not denied by the return, nor controlled by other evidence; and the allegations there were held to be mere conclusions of law and not matters of fact. The court said:

"There could be no better illustration than this case affords of the wisdom, if not necessity, of the rule, established by the decisions of this court, above cited, that a prisoner in custody under the authority of a State should not, except in a case of peculiar urgency, be discharged by a court or judge of the United States upon a writ of

habeas corpus in advance of any proceedings in the courts of the State to test the validity of his arrest and detention. To adopt a different rule would unduly interfere with the exercise of the criminal jurisdiction of the several States, and with the performance by this court of its appropriate duties."

Also, Kohl vs. Lehlback, 160 U. S., 293, where it was held, too, that an objection to a juror can not be used in a proceeding on habeas corpus to raise a constitutional question, it not having been brought to the attention of the state court, pp. 302, 303.

The two cases last cited, and also Reid vs. Jones, 187 U. S., 153, show that the exceptional cases in which resort may be had to habeas corpus in the federal courts, instead of to the highest court of the State, are only those of public and not mere private emergency, where the operations of the Government are affected, as by the imprisonment of an officer.

In Minnesota vs. Brundage, 180 U. S., 499, 505, it was also held that the constitutional question must have been raised in the state court before it can be made the basis of a proceeding in habeas corpus in the federal court.

Also, New York vs. Eno, 155 U. S., 89, 96-7.

227 The constitutional question must be real and substantial.

In Storti vs. Massachusetts, 183 U. S., 138, the court said by Mr. Justice Brewer, pp. 143-4:

"The petition presented no case entitling the petitioner to a discharge, as the grounds stated herein are absolutely frivolous," and "the grounds set forth in this petition for the discharge by the federal court of the petitioner from the custody of the warden are wholly without foundation."

In Bradley vs. Lightcap, No. 3, 195 U. S., 25, the court said by Mr. Chief Justice Fuller:

"A case does not necessarily arise under the Constitution or laws of the United States every time a writ of error would lie to the judgment of the State court," p. 26.

The above cases were on appeal under the circuit court of appeals act, but they simply apply the principle which is well established in all cases where the appellate jurisdiction of the court is invoked.

In Wilson vs. North Carolina, 169 U. S., 586, the court said by Mr. Justice Peckham:

"A consideration of the facts convinces us that the motion to dismiss this writ of error for lack of jurisdiction ought to be granted," citing (p. 595) Hamblin vs. Western Land Co., 147 U. S., 531, where it was held that a "real, and not a fictitious, federal question is essential to the jurisdiction of this court over the judgments of state courts;" and New Orleans vs. New Orleans Water Works Co., 142 U. S., 79, 87, where it was held that "the bare averment of a federal question is not in all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a federal question might be set up in almost any case and the jurisdiction of this court invoked simply for the purpose of delay." And p. 596: "We are of opinion that the facts herein

present no such case, and that the jurisdiction of this court does not extend to the case as made in the record now before us."

228 Also Bonin vs. Gulf Co., 198 U. S., 115, 117.

Lampasas vs. Bell, 180 U. S., 276, 282–3.

The federal question can not be first raised in the assignment of errors, but there must have been a definite claim of a right under the Constitution or laws of the United States.

Muse vs. Arlington Hotel Co., 168 U. S., 430.

Ansbro vs. United States, 159, U. S., 695, 7.

Chicago & N. W. Ry. vs. Chicago, 164 U. S., 454.

It is true that the jurisdiction of the court in error to the state court of last resort depends on R. S., section 709, which in terms requires the federal right to be specially set up or claimed. But the above cases and many others show that the failure of the record to disclose a case of the kind which this court is authorized by law to review is held to amount to a lack of jurisdiction, not mere ground for affirmance. See Arkansas vs. Schlierholz, 179 U. S., 598; Chicago & N. W. Ry. supra, 457–8; Hulbert vs. Chicago, 202, U. S., 275, 281; Davis vs. Texas, 139 U. S., 651, 657; Mortin vs. Texas, 200 U. S., 316.

The court has decided too often to require citation of cases that proceedings in habeas corpus can not be used to review the action of state courts. And the above cases show that when the appellate jurisdiction of this court is invoked by appeal from the action of circuit courts in such proceedings, the court applies the same strictness of scrutiny in determining whether they really and substantially involve the application or construction of the Constitution, as it does in cases where it reviews on error the final judgments of the state courts. A case can not be said to involve a federal question when no such question was raised, nor any facts shown from which it could be raised, in the course of the State proceedings with which it is sought to interfere by habeas corpus.

Now as averred in the plea and shown by the record, no
229 question of the application or construction of the Constitution was raised or suggested at the trial in the state court, nor was there proof or tender of proof which could be the foundation for such question. Mortin vs. Texas, supra. The petition for habeas corpus alleged no lack of jurisdiction in the state court either to try Johnson or to adjudge the sentence under which he was in custody. It is not charged that any of the alleged denials of rights secured to him by the Constitution of the United States were made by virtue or under color of the Constitution, laws, or rules of practice of the State. While an alleged denial of constitutional rights by state officials acting contrary to the laws of the State may be subjected to review in this court, this can not be done through a writ of habeas corpus, but only by writ of error to the highest court of the State.

In re Wood, 140 U. S., 278.

The same rule was applied in Kentucky vs. Powers, supra. While that case related to habeas corpus issued under the removal act,

R. S., section 641-2, it applies equally here because the principle is the same.

As the court said by Mr. Justice McKenna in Howard vs. Kentucky, 200 U. S., 164, 173, "It was not designed, as was observed by the Chief Justice in In re Converse, supra, 'to interfere with the power of the State to protect the lives, liberty, and property of its citizens; nor with the exercise of that power in the adjudication of the courts of the State in administering the process provided by the law of the State.'"

The various decisions which speak of the discretion of the federal courts whether they will interfere or not with state proceedings directly by habeas corpus or require the party first to exhaust his remedies in the state courts must manifestly be taken to refer to cases which do, in fact, involve constitutional rights and therefore
229 come within federal jurisdiction and not to cases of which, from heir lack of such nature, the federal courts can not take cognizance at all.

The claims of Johnson that he was deprived of constitutional rights were not real and substantial, but were "absolutely frivolous" and "wholly without foundation."

Storti vs. Massachusetts, supra.

In his petition for appeal filed in this court he charges, first, that he "was denied his right of a public trial." But the proof at the hearing in the Circuit Court, all of which is set forth in the transcript which accompanied the petition for appeal, showed without dispute that at the request of his own counsel precautions were merely taken to prevent the attendance of disorderly persons; that such precautions were withdrawn when the first day of the trial showed them to be needless, and that during each and all of the three days the trial lasted there was a large attendance of the public. In his petition to the Circuit Court he charged that his father and mother and all other friends were shut out. There is not a particle of proof to this effect, but the evidence shows it was a mere pretense.

In his petition for appeal he charged, second, that he was denied a trial by a fair and impartial jury, and "was denied the aid of counsel, all in violation of the fifth and sixth amendments to the Constitution." The record discloses, on the contrary, without dispute, that he never made or had ground for any objection to the selection or character of the jury. On the contrary, it appears that his counsel, learning from the officers of the court that colored men had not been discriminated against in the selection of the jury, forebore to make any objection, and the evidence showed that names of negroes were in the jury box, and that negroes had served on juries at various times.

In his petition to the Circuit Court he set out the emotional
231 exclamation of a juror, which the proof shows was after the evidence had closed and the young woman upon whom the rape had been committed had been recalled at the request of a juror, but no exception or request was made in consequence of the incident, because it was treated by all, including the prisoner and his counsel,

as merely the effect of the proof on an emotional nature, and not as evidence that the juror was prejudiced when accepted and sworn. As stated in the answer the juror was quieted by the other jurors and apologized to the court. The record further shows that as he was unable to employ counsel, the state court appointed three lawyers of high standing to conduct his defense, and that they did so, as he himself admits in his petition to the Circuit Court, with ability, fidelity, and zeal. It is well settled, too, that the first ten amendments to the Constitution apply only to federal and not to state proceedings.

Spies vs. Illinois, 123 U. S., 131, 166.
In re Sawyer, 124 U. S., 200, 219.
Davis vs. Texas, 139 U. S., 651, 61–3.

In the petition for appeal he charges, third, that he "was also denied rights secured him under the fourteenth amendment to the Constitution, in this, that he was denied by the state court the right of change of venue, and the right after his conviction of making a motion for a new trial and appealing his case to the state supreme court, which is provided for by the laws of the State. The record shows, on the contrary, that he never applied for a change of venue at all; that he presented no motion for a new trial until the three days allowed by the long-settled rules of the court had expired, and that he was not denied the right of appeal to the state supreme court. He never applied for it nor tendered a bill of exceptions.

232 He charges in the petition for appeal, fourth, "that he was also denied the right of setting up by plea in abatement to the indictment and by affidavit to challenge the array of trial jurors on account of the fact that the state jury law has excluded from the jury box the names of all persons of petitioner's race, he being a negro or a person of African descent." There was no such law, and the record shows that he never claimed the right to file such a plea or affidavit.

The above are the only matters claimed to involve the application or construction of the Constitution of the United States that were set up in the petition for appeal.

The allegations of the petition in the Circuit Court went more into detail, but each and every of them was explicitly denied by the answer and the record shows that they were wholly unfounded. It contains the testimony of his own counsel, of the judge and clerk of the trial court, and of the Attorney-General who conducted the prosecution. The judge did not inform petitioner's counsel that he was not going to grant a change of venue, nor did he or any other official advise and inform his counsel that if they made an application for a change of venue or a continuance the mob would again attack the jail and succeed in murdering the petitioner. There was no evidence whatever to that effect. The vague statement that "these officials" had caused and inspired an article to be printed in a newspaper assuring the public that the prisoner would surely be tried on the day set, and that there would be no further delay, etc., was wholly un-

supported by the proof. On the contrary, it appears that the article was prepared and published by one of his own counsel, of his own motion, to allay public feeling. If his counsel saw fit not to take the necessary steps to secure a change of venue, or postponement of the trial from the day they themselves had agreed on, or an exception to the denial of them, as the record shows, this certainly constituted no invasion of constitutional rights by the State of Tennessee or any official thereof, or anybody else.

233 That a mob had once attacked the jail with intent to lynch him and been repelled, was true, but he had already been removed to a distant county; that the danger was generally feared of a fresh outbreak of mob violence in case of delay, was doubtless true. But such a condition of affairs, deplorable as it was, will surely not be claimed to constitute a ground for federal jurisdiction in habeas corpus. It was a local condition with which the State alone had to deal, and if it had any effect on the course of Johnson's trial and this could be the subject of federal cognizance at all, for which there is no authority whatever in Constitution, law, decision, or principle, it could only be in review of the action of the State court of last resort with reference to the matter when properly brought before it.

The record shows it is not true that the court or anybody compelled Johnson to get up from his seat and walk in front of the young lady he was charged with outraging to be examined and scrutinized by her. On the contrary, it shows that this very usual request by a juror was complied with by him voluntarily without objection from either him or his counsel.

The allegations with reference to the placing names in the jury box are shown by the record to be wholly untrue.

While it is true that his counsel gave notice that they would file a motion for a new trial, they did not do so because, after careful conference with other lawyers appointed by the court at their request for that purpose, they decided that there were no just grounds for the same. As one of them, Thomas, said to the judge, "I think you have given us a painstaking and a fair and impartial trial." It was unusually so. The prisoner's counsel were advised in advance of the state's evidence, the court recessed to enable them to secure a witness, the trial lasted three days, and the jury took from one day until the next in considering their verdict.

234 This conclusion being presented to the petitioner, he submitted to it. He says he did so to avoid being killed by a mob. But surely it will not be contended that this gave the federal courts jurisdiction in habeas corpus. It is nowhere suggested that the state authorities were unwilling to protect him, as they had already done, nor that the power of the State was insufficient to enable them to do so. Even if this were not so the fact would not give the federal judiciary jurisdiction.

The record shows that counsel who took charge of Johnson's case, after he had accepted the decision of those who had conducted his trial to proceed no further, never took any steps towards preparing

or presenting a bill of exceptions or taking an appeal, although the court remained in session for an entire week after his conviction, and for five consecutive days after said counsel first appeared. The suggestion that the trial judge left the State as a reason for Johnson's counsel not getting a bill of exceptions and leave to appeal, the record shows to have been wholly frivolous by the testimony of counsel on both sides, and that of the new counsel, Paden, himself.

In short, the record shows that this court was imposed upon with respect to the true nature of this case, and so grossly that it is hard to resist the conclusion that this was purposely done. There was not even the color of a case involving any real question of constitutional right. The conference of counsel, six in number, and of the best the city afforded, unanimously decided that Johnson had had a fair trial; that no error had been committed; that an appeal would therefore be useless except merely to prolong the life of a man found guilty of a most infamous crime, which they did not consider it their duty to attempt, especially in view of the probable result upon public
235 feeling. The subsequent efforts of other counsel, ignorant and reckless of the facts about the trial, have put the court unwittingly in a false position and misled the Attorney-General. And we respectfully submit that persistence in the prayer of the information in view of the plea, supported as it is in all respects by the undisputed facts in the record, would be an appeal to false pride and not to the true dignity which has always ennobled the Supreme Court of the United States.

The people of the South are struggling with a task the like of which was never known before. It is one which nobody but themselves can work out, and they must do it unaided save by friendly sympathy. The provocations for attempts at irregular justice, which are too common in all parts of the country, are more numerous and frequent there where apprehension stands at every man's door to quicken his indignation at outrages committed upon the families of his neighbors.

The Attorney-General in his testimony said: "I feel like the law's delay already in respect of all cases of this kind had engendered whatever mob spirit existed throughout the country on account of offenses like this, and if we could have speedy trials rather than delay them it would have a good effect on the public, with reference to allaying in the future any such mob spirit as generally existed in cases of this kind."

That this is true there can be no doubt. There may be cases where haste overleaps the precautions with which the administration of justice must always be guarded, but the courts of the States do not lack the power or the will to correct such errors. When to mere error is added the sacrifice of rights secured by the Federal Constitution this court has always been and will always be prompt with its ample power of redress which is limited only by precautions against premature or needless interference with State tribun-

236 als to which the Constitution is as sacred as to itself. Whitten v. Tomlinson, supra, at p. 245.

The case here presented involved neither a denial of justice, whether by the laws of Tennessee or by the mode in which they were administered, nor the invasion of a right secured by the Federal Constitution. It was therefore not a case of which the Circuit Court or this court was authorized to take cognizance. The Circuit Court, learning the nature of the case, dismissed the petition. This court, however, undertook to entertain an appeal under misapprehension caused by a reckless misrepresentation of its character. If these defendants did what they are charged with doing they are each and all foresworn officers of the State of Tennessee and criminals under its laws besides. It would be a reflection on the dignity of that old and honored Commonwealth to assume that they will go unpunished. And we submit, with all respect, that if the court shall find that the case was in fact one in which under the law an appeal did not lie, its dignity will be better sustained by correcting its allowance of one than by making it the basis of further action, and that of a purely criminal nature which can subserve no remedial purpose whatever.

Respectfully submitted.

JUDSON HARMON,
For J. F. Shipp, Sheriff, et al.

CLIFT & COOKE,
ROBERT PRITCHARD,
Of Counsel.
NOVEMBER, 1906.

237 In the Supreme Court of the United States. October Term, 1906. No. 12, Original.

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP ET ALS., DEFENDANTS.

Brief of attorneys for Nicholas Nolan, Claude Powell, Charles Powell, Bart Justice, John Jones, Henry Padgett, William Mayes, John Varnell, and Alfred Handman.

238 In the Supreme Court of the United States. October Term, 1906.

May it please the honorable court:

Inasmuch as the charges against these defendants are the same, and as their defenses are identical in substance, we have chosen to present a joint brief for all of them.

The allegation of the information against these respondents is found in the 5th paragraph and is as follows:

"That thereafter, to wit, at about the hour of 9 o'clock on the evening of the said 19th day of March, 1906, at the city of Chat-

tanooga, in the said county and State, the above-named defendants, John F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan (whose true first name is to complainants unknown), "Sheenie" Warner (whose true first name is to complainants unknown), Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice (whose true first name is to complainants unknown), John Jones, A. J. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond, and each of them, and a large number of other persons whose names are to complainants unknown, did then and there willfully, unlawfully, and wrongfully combine, conspire, confederate, and agree together to break and enter the said county jail of Hamilton County for the purpose of taking therefrom the person of the said Ed Johnson to lynch and murder him, the said Ed Johnson, with the intent then and there had and entertained by the said defendants, and each of them, to show their contempt and disregard for the order of this honorable court made, entered, issued, and published as aforesaid, and for the purpose of preventing this honorable court from hearing the appeal of
239 the said Ed Johnson allowed by this court as aforesaid, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States; that in the prosecution and furtherance of said unlawful conspiracy, made and entered into as aforesaid, and in order to show their contempt and disregard for the said order of this honorable court, and in order to prevent this court from hearing said appeal, said defendants and each of them did then and there do the things and commit the acts more particularly described, as follows, to wit:

"That between the hours of 9 and 12 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga, in the county and State aforesaid, a large number of persons, including the above-named defendants, with the exception of the said John F. Shipp, the sheriff of said county, and the said Jeremiah Gibson, deputy sheriff of said county, assembled in the vicinity of said county jail, and thereupon said mob unlawfully and wrongfully entered said jail and with force and arms broke open the cell in which the said Ed Johnson was then and there confined as a prisoner, and with force and violence, and against the will of him, the said Ed Johnson, took him, the said Ed Johnson, from said jail to a point a short distance therefrom and hanged him, the said Ed Johnson, by the neck until he was dead; that at the time said mob entered said jail as aforesaid the only person in charge thereof was the said deputy sheriff, Jeremiah Gibson; that while the mob was in possession of said jail the said sheriff, John F. Shipp, arrived at said jail but made no effort to prevent said mob or any of the members thereof from taking the said Ed Johnson from said jail; that the said John F. Shipp and the said Jeremiah Gibson

were in truth and in fact in sympathy with said mob, and while pretending to perform their duty as officials of said county and State in affording protection to the said Ed Johnson, who was then and there in their unlawful custody and control, the said John F. Shipp and the said Jeremiah Gibson and each of them did in
240 truth and in fact aid and abet said mob and the members thereof in the prosecution and performance of their unlawful act in lynching and murdering the said Ed Johnson as aforesaid; that during all this time the above-named defendants and each of them, and the said John F. Shipp and the said Jeremiah Gibson and each of them then and there well knew that the Supreme Court of the United States had made, entered, issued, and published the order in the manner hereinbefore set forth; that all of said acts were then and there committed by said defendants and each of them, and the other members of said mob, whose names are to complainants unknown, with the intent then and there had and entered into by them and by each of them to show their contempt and utter disregard for the order of this honorable court made and entered into as aforesaid, and in order to prevent this honorable court from hearing the appeal of the said Ed Johnson, which appeal had been perfected and allowed as aforesaid."

Each of the defendants has filed a separate answer in which he purges himself of the contempt alleged against him by direct and positive denial of every fact alleged against him in the information of the Attorney-General. Each of them denies that he violated the order of this honorable court, or that he did any act in connection with the lynching of Ed Johnson by the mob of the 19th of March, 1906, which was in contempt of the order of this honorable court, or intended to deprive it of hearing the appeal of said Ed Johnson, or that he counselled or advised the act of the mob in advance, or approved it after it was done. We quote the answer of the defendant, Alfred Handman, which substantially is the same as the answers of all the defendants:

THE UNITED STATES OF AMERICA,
complainants,
vs.
JOHN F. SHIPP AND OTHERS,
defendants.

Answer of Alfred Handman to the information of Mr. Attorney-General William H. Moody, filed in the above-styled
241 cause, and to the rule to show cause why he should not be punished as and for a contempt of this honorable court, issued May, 28, 1906.

By way of answer to the information filed by the Attorney-General and the rule granted by the honorable court this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed

Johnson was taken from said jail and hanged. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed Johnson.

He did not at any time combine, conspire, confederate or agree with the persons named in said information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed Johnson to lynch and murder him. He did not participate with the mob that broke the jail, or with the mob which lynched and murdered said Ed Johnson. He did not know beforehand that a mob was to be formed to lynch said Ed Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of 9 o'clock p. m. March 19, 1906. At that time defendant was at the saloon of Ransom & Co., on Market street, in the city of Chattanooga, where he had gone about 8 o'clock p. m. to meet some friends. He met among others Messrs. Wm. Hodgson, Richard Pooler, and John Kean. By an ordnance of the city of Chattanooga all saloons are required to close at the hour of ten o'clock. He remained at said saloon until the closing
242 thereof at ten o'clock p. m. After leaving said saloon defendant went immediately to Fire Hall No. 1, on Carter street, in said city of Chattanooga, and there met the night watchman, Mr. Henry Gunther, who told him of the lynching of Ed Johnson. He left the Fire Hall about 10.30 o'clock p. m. and went to his bed at the home of Mrs. Kelly O'Rear, on Gillespie street.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this honorable court or to prevent this court from hearing the appeal of the said Ed Johnson. He has always entertained the very highest respect for this honorable court.

And now having fully answered the information and rule so far as they affect him, he prays to be hence discharged, and as in duty bound he will ever pray.

ALFRED HANDMAN.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for defendant.

STATE OF TENNESSEE, *Hamilton County:*

Personally appeared Alfred Handman and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

ALFRED HANDMAN.

Subscribed and sworn to before me this Oct. 8, 1906.

WILLIAM C. SHEPHERD, *Notary Public.*

This answer and the others are duly sworn to by the defendants, and we respectfully insist that they are full and frank answers to the charges made in the information. We do not see how answers could be framed which would more completely meet and deny the charges and specifications preferred against the defendants.

243 Upon the coming in of these answers, we entered a motion severally for each of the respondents to discharge the rule nisi against him.

I. Should the defendants be discharged upon the coming in of their sworn answers purging themselves of contempt?

Proceedings in contempt are of two classes, namely, (1) those instituted solely for the purpose of vindicating the dignity and preserving the power of the court. These are criminal and punitive in their nature and are usually instituted by the court in the interest of the general public and not of any particular individual or suitor. (2) Those instituted by private individuals for the purpose mainly if not wholly of protecting or enforcing private rights and in which the public have no special interest. These are remedial or civil in their nature rather than criminal or punitive.

The proceeding in this case falls within the first class of contempts mentioned. The rule at common law was that a person charged with contempt of a court of law was made to answer the contempt on oath, and if by his oath he cleared himself of the contempt he was discharged. No testimony was taken by the court to rebut his own, but should he swear falsely, he was subsequently prosecuted for perjury. This is still the rule except in cases affecting private property and private rights. It does not make so much difference whether the contempt proceeding is in a court of law or a court of equity. The logical distinction between contempts in this regard relates to the nature of the particular contempt rather than to the court in which it occurred.

Thompson v. Pa. Ry., 48 N. J. Equity, 105.

Manifestly, the contempt charged in this case belongs to
244 the class known as criminal or constructive contempts in which the answer of the contemnor is conclusive.

Rex. v. Vaughan, 2 Doug., 516; Rex. v. Sims, 12 Mod., 511; U. S. v. Dodge, 2 Gall. (U. S.), 313; In Re May, 1 Fed. Rep., 737; Haskett v. State, 51 Ind., 176; Burke v. State, 47 Ind., 528; State v. Earle, 41 Ind., 464; People v. Few, 2 Johns., 250; Matter of Walker, 82 N. C., 95; Matter of Moore, 63 N. C., 397; Thomas v. Cummings, 1 Yates Pa., 40; Underwood's case, 2 Hump. Tenn., 46.

The case In Re May, 1 Fed. Rep., 737, the opinion in which was delivered by Mr. Justice Brown while he was a circuit judge, seems to us to contain a lucid and accurate statement of the law bearing on this question. In that case there was a rule nisi against a juror

setting forth that the defendant had gone in the night time to the house of Markus Burnstine, one of the defendants to a suit then being tried before the jury, for the purpose of corruptly conferring with Burnstine concerning the case on trial, and concerning the verdict to be rendered therein, and that he talked with Burnstine and allowed Burnstine to talk with him concerning the facts in evidence in the case, and also corruptly negotiated with Burnstine as to the verdict he should render in the case, and that therefore defendant was guilty of misbehavior in the presence of the court or so near thereto as to obstruct the ends of justice.

The defendant answered, and gave in his answer a lengthy history of his transactions with one of the litigants which presented on its face an incredible and unreasonable story. It was a fishy story on the face of it. Judge Brown uses the following language in deciding the case:

"It is a cardinal rule in proceedings for criminal contempt
245 that the answer of the defendant cannot be traversed and must be taken as true. If false, the government is remitted to a prosecution for perjury." Citing 4 Black. Com., 281. In the matter of Pitman, 1 Curt., 186; U. S. v. Dodge, 2 Gall., 313, etc.

"But the answer must be credible and consistent with itself, and if the respondent states facts which are inconsistent with his avowed purpose and intention, the court will be at liberty to draw its own inferences from the fact stated. For instance, if the respondent in this case had stated that in his interview with Burnstine he had asked and received of him $1,000.00, and had kept the money in his pocket until after the jury were discharged; and had further stated that he did this for the purpose of delivering the money to the district attorney, and prosecuting Brunstine for bribery, it would scarcely be contended that the court would be bound to draw the same inference from his conduct. So then, it is, after all, a question in every case whether the facts stated are consistent with an honest intent."

The case of Haskett vs. The State, 51 Ind., 177, was a proceeding of contempt against a man charged with having induced a witness to hide and conceal herself to avoid service of a subpoena to testify on her; he answered admitting that he had accompanied the witness when she went away from the court where the action was pending; that she was his daughter and told him that she meant to abandon the prosecution; that he had no knowledge that a subpoena had been issued for her, etc., etc.

Upon this answer the defendant moved to be discharged, which motion was overruled. The court reversing the judgment in that case said:

"It has been held in several cases in this court that if the defendant in such case deny under oath the facts constituting the alleged contempt, he should be discharged, leaving him, if he has sworn falsely, to be prosecuted for perjury."

246 And again:

"We believe it is the policy of the law not to extend the proceeding for constructive contempt to cases not coming within established rules, and we are therefore the more willing to hold that the answer of the appellant was sufficient to purge him of the alleged contempt. We conclude that the court should have discharged the appellant from the attachment upon the showing made by him. We may remark in conclusion that it was probably wrong for the court, after adjudging the appellant's answer insufficient, and he had declined to answer further on to make an issue for him and proceed to try the same. If the answer did not purge the alleged attempt, there was probably nothing to be done but to assess such punishment as the circumstances of the case made proper. Whether the defendant does or does not purge himself of the alleged contempt, there should not probably be any trial."

In Burk vs. The State, 47 Ind., 528, the rule is thus stated:

"Where a person charged with a constructive contempt in procuring a witness to asbent himself appears, and in answer to a rule, makes a sworn statement that the matters in the affidavit are not true, and alleges the state of facts consistent with his innocence, and that there was no intention to interfere with the process of the court, he should be discharged; and it is error for the court to proceed and hear evidence of the truth of the original affidavit and the falsity of the answer."

In State v. Earle, 41 Ind., 465, the learned Judge Osborn remarks:

"We have examined the authorities and are satisfied that in all cases of proceedings for alleged constructive contempt, except perhaps when they are to enforce a civil remedy, if the party charged fully answers all the charges against him he should be discharged as to the attachment and that the court cannot after that hear evidence to impeach or contradict him."

247 To the same effect is People vs. Pew and others, 2 Johns., 290.

In Walker's case in 82 N. C., page 95, it is stated by the court that where the answer to a rule to show cause why one should not be attached for contempt negatives under oath any intentional disrespect to the court or purpose to obstruct its process the rule should be discharged.

The case In re B. F. Moore, et als, 63 N. C., 397, is in many respects a very peculiar one. Certain lawyers had united in signing and publishing a paper which was headed:

"A solemn protest of the bar of North Carolina against judicial interference in political affairs," and in which, among other offensive things, they said: "But never before have we seen the judges of the Supreme Court singly or en masse moved from that becoming propriety so indispensable to secure the respect of the people, and throwing aside the ermine, rush into a mad contest of politics under the excitement of drums and flags. From the unerring lessons of the past, we are assured that the judge who openly and publicly displays

his political party zeal, renders himself unfit to hold the balance of justice, and that whenever an occasion may offer to serve his fellow partisans he will yield to the temptation and the 'wavering balance' will shake."

Respondents answered, admitting the signing of the paper, but explaining that the paper was conceived and prepared during a recent political canvass for the Presidency, and that its publication was deferred until after the close of the canvass, to avoid its having the appearance of a partisan document. They admitted that their purpose was to express their disapprobation of the conduct of individuals occupying high judicial stations. Yet, as an act of justice to themselves against the charge made in the rule, they disavowed in signing and publishing the paper any intention of committing a contempt of the Supreme Court, or of impairing the respect
248 due to its authority, but on the contrary, they avowed that their motive was to preserve the purity which had ever distinguished the administration of justice by the courts of their State. The court disposed of the case as follows:

"The learned counsel then fall back on the ground of a distinction between the indictment for a libel and a rule nisi to show cause, and assumed, as a matter of law, that in this case the respondent having, on oath, disavowed any intention of committing a contempt of the court, or of impairing the respect due to its authority, so as to meet the words of the rule, it must be discharged. The authorities cited by the learned counsel are conclusive. The law is well settled in this class of cases, where the intention to injure constitutes the gravamen. The rule rests in sound reason. In this proceeding, as the court is judge in its own case in the first instance, where the case is made out in the judgment of the court, the party in the last instance is allowed to try himself. His intention is locked within his own breast and is known to himself alone, and he is permitted to purge himself by his own avowal. He cannot be convicted, if he is innocent, as he may be by false evidence before a jury. For the court does not try him, he tries himself. Chief Justice Wilmot's opinion, 257–8, referred on the trial of Judge Peck, 507. If the party, after the court decides against him, declines to try himself, it must be because he knows himself to be guilty."

Now, if it be true, as held in these North Carolina cases that contem'ors may admit that they did the acts complained of, and yet, upon their showing on oath that they had no intention to set at naught or disregard the orders of the court, that they must be discharged without more, is it not, we respectfully inquire, a fort'ori, a sound statement of the law that in a contempt involving criminal acts, the answer of the defendants denying the commission of the acts charged against them are conclusive and must result in their discharge?

So we insist that the motion to discharge the defendants
249 because they have purged themselves of the contempt by their answers should be sustained.

Cyc. vol. 9, p. 44, Oster vs. People, 192 Ill., 473. Exparte Debs, 64 Fed., 724. Exparte Savin, 131 U. S., 267.

II. If this motion be not granted, then what is to be the course of procedure?

It may be put down to the credit of the people of the United States that cases of original cognizance, where this great tribunal has been called upon to issue process of contempt, are exceedingly rare.

The people have too profound a respect—too great a veneration for this, the highest court in the land—to knowingly or intentionally violate its orders or to impede it in the administration of justice. Some cases of contempt (not a great many) which originated in the inferior courts have found their way to this court. One of the most notable cases of this kind is that of Hovey v. Elliott, 167 U. S., 409, in which Mr. Justice White gave a very able and exhaustive "judicial history of the law concerning contempt of court in England and in this country."

The point which the honorable court was illustrating was that, in a contempt case, the defendant had the same right to demand that he be heard in his defense as he would have in a criminal case. The court says, page 443:

"In the view we take of the case, even conceding that the statute does not limit their authority, and hence that the courts of the District of Columbia, notwithstanding the statute, are vested with those general powers to punish for contempt which have been usually exercised by courts of equity without express statutory grant, a more fundamental question yet remains to be determined, that is, whether a court possessing plenary power to punish for contempt, unlimited by statute, has the right to summon a defendant to answer, and
250 then, after obtaining jurisdiction by the summons, refuse to allow the party summoned to answer or strike his answer from the files, suppress the testimony in his favor, and condemn him without consideration thereof and without a hearing, on the theory that he has been guilty of a contempt of court. The mere statement of this proposition would seem, in reason and conscience, to render imperative a negative answer. The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action, and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

In the case of McVeigh vs. U. S., 11 Wall., 259, where it was sought to deny the right of McVeigh to be heard in opposition to the confiscation of his property by the United States because he was en-

gaged in rebellion against the United States, Mr. Justice Swayne observes:

"In our judgment the district court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files. As we are unanimous in this conclusion, our opinion will be confirmed to that subject. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and hence could have no locus standi in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon our civilization. We can not hesitate or doubt on this subject. It would be contrary to the first principles of the social compact and of the right administration of justice."

In the case of Windsor vs. McVeigh, 93 U. S., page 277,
251 which was ejectment for the recovery of land which had been confiscated, Mr. Justice Field delivering the opinion, the court says:

"The principle stated in this terse language lies at the foundation of all well-ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.

"That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, whatever its authority may be, by the law of its organization, over the subject matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim, or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, 'Appear and you shall be heard,' and when he has appeard, saying, 'Your appearance shall not be recognized and you shall not be heard.' In the present case, the District Court not only in effect said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation; it was in fact a mere arbitrary edict, clothed in the form of a judicial sentence.

"The law is and always has been, that whenever notice or citation is required, the party cited has the right to appear and be heard; and when the latter is denied, the former is ineffectual for any purpose. The denial to a party in such a case, of the right to appear, is in legal effect the recall of the citation to him. The period within which the appearance must be made and the right to be heard exercised, is, of

course, a matter of regulation, depending either upon positive law, or the rules or orders of the court or the established practice in
252 such cases. And if the appearance be not made, and the right to be heard be not exercised, within the period thus prescribed, the default of the party prosecuted, or possible claimants of the property, may, of course, be entered, and the allegations of the libel be taken as true for the purpose of the proceeding. But the denial of the right to appear and be heard at all is a different matter altogether."

Of course, it is well understood that in the face of the answer of these respondents, the court will not condemn them without a hearing. The question is, if their answers be not accepted as conclusive and the facts must be inquired into further, how is that to be done so as to preserve the rights of the defendants to be heard? It can not be conceived that this honorable court would turn itself into a trial court and jury to hear witnesses examined and cross-examined, and arguments of lawyers upon the question of the guilt or innocence of these men. It may be in accordance with good practice to refer the question to a commissioner to take evidence and report to the court.

This brings us back to the point of again insisting that the safe and proper way to dispose of this question is to adhere to the course of procedure of the ancient common law, which is to discharge the defendants on their answers purging themselves for contempt.

Respectfully submitted.

LEWIS SHEPHERD,
MARTIN A. FLEMING,
T. P. SHEPHERD,
Attorneys for Defendants.

253 And afterwards, to wit, on the 4th day of December, A. D. 1906, an order for appearance for defendants was filed in the words & figures following, viz:

Order for appearance.

Supreme Court of the United States. No. 12. Orig. October term, 1906.

THE UNITED STATES, complainant,
vs.
JOHN F. SHIPP ET AL.

The clerk will enter my appearance as counsel for the defendants.

ROBERT B. COOKE,
Chattanooga, Tenn.

NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

(Indorsed:) Supreme Court U. S. October term, 1906. Term No. 12. Original. Appearance for Defts. Filed December 4th, 1906.

254 And afterwards, to wit: On the 4th and 5th days of December, A. D. 1906, the following entries appear of record, viz:

255 No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

The argument of the preliminary questions herein was commenced by Mr. Solicitor-General Hoyt, of counsel for the complainant.

DECEMBER 4, 1906.

256 No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

The argument of the preliminary questions herein was continued by Mr. Solicitor-General Hoyt, of counsel for the complainant; Mr. Judson Harmon, Mr. Lewis Shepherd, Mr. G. W. Chamlee, and Mr. Robert B. Cooke, of counsel for the defendants, and concluded by Mr. Solicitor-General Hoyt, of counsel for the complainant; and leave was granted to counsel for each side to file additional briefs within three days.

DECEMBER 5, 1906.

257 And afterwards, to wit, on the 8th day of December, A. D. 1906, a brief for the complainant was filed in the words and figures following, viz:

258 In the Supreme Court of the United States. October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP AND OTHERS, defendants.

Brief for the United States on claim that denials under oath purge contempt.

259 In the Supreme Court of the United States. October term, 1906.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP AND OTHERS, defendants.
No. 12. Original.

Brief for the United States on claim that denials under oath purge contempt.

The rule was thus stated in the time of Holt, Chief Justice: Per curiam: "If one brought in, in contempt, deny all upon oath, he is

of course discharged of the contempt; but if he has foresworn himself he may be prosecuted for perjury." (King v. Sims, 12 Mod., 511.)

Lord Mansfield briefly stated the practice and glanced at the entire field in King v. Vaughan (2 Doug., 516). That was a rule for an attachment against an attorney for acting as such after having been struck off the roll:

"If the defendant, by his affidavit, fully denies the charge on which the rule for an attachment was granted, that is sufficient; the weight of the evidence or the credibility of what is sworn is never con-
260 sidered; but if the defendant is hardy enough to swear falsely he is left to be punished by indictment. In chancery they proceed differently; they examine the defendant on interrogatories, and also examine witnesses on both sides, and then decide upon the truth of the charge."

See also 2 Hawkins, Pleas of the Crown (6th ed., ch. 22, p. 213), for a full discussion of the doctrine and practice, from which it is evident that the old rule was laid down with regard to official misconduct by sheriffs, bailiffs, attorneys, inferior judges, jailers, jurors, etc., and relates to contempts of the King's writs, contempt in the face of the court, contemptuous words or writings concerning the court, contempt of its rules or awards, abuses of process, forgeries of writs, and other deceits. Contempt of its award refers only to such a case as submission to arbitration and then refusal to perform the award.

Lord Brougham, for instance, in Wellesley's case (2 Russell & M., 639, 667), considering the distinction between civil and criminal contempts, and citing two cases in the King's Bench, says that nonperformance of an award being a disobedience was a contempt of the court, and so might be regarded as technically speaking and in form an offense; but it had been held that, as it related simply to a civil matter and was rather in the nature of process to compel the performance of a specific act, the matter was in substance not criminal
261 but civil. Wellesley's case is also interesting, because arguments of counsel endeavored to show that there is no just distinction between civil and criminal contempts; that the only real distinction is between simple disobedience and disobedience of an aggravated kind, although the object in every case is the same—to effect compliance with the order of the court.

Of course a positive command of the court, like the order of the court in the present case, must nevertheless always have been embraced within the power and, one would think, within such comprehensive statement of the practice; but the authorities do not say so. The inference is manifest that the rule of conclusiveness of answer was restricted to comparatively trifling offenses by official persons. (For example, Matter of Fitton, 16 How. Pr., 303.) There is no case anywhere to suggest that it was ever predicated of a crime of the highest magnitude which was also a contempt because it was such a crime.

Coming at once to recent statements, this is what Mr. Justice Brown said (when district judge) in the May case (1 Fed. Rep., 737, 743): "It is a cardinal rule in proceedings for a criminal contempt that the answer of the respondent can not be traversed and must be taken as true. If false, the Government is remitted to a prosecution for perjury," citing Blackstone, United States v. Dodge (2 Gall., 313) and other cases. "But the answer must be credible and con-
262 sistent with itself, and [if not] the court will be at liberty to draw its own inferences from the facts stated," citing two cases in the Term Reports. "So, then, it is after all a question in every case whether the facts are consistent with an honest intent." The charge there was that a juror had corruptly conferred with a defendant under indictment and on trial. Respondent admitted the interview, but explained the circumstances, denying corrupt purpose or any intention of contempt. Nevertheless the court adjudged him guilty. So that the learned justice in that case exercised his discretion and applied the exception and not the rule. Sound judicial discretion controls. (In re Perkins, 100 Fed. Rep., 950, citing Savin's case, 131 U. S., 267.)

As to the difference in equity:

"If the answer of a defendant in questions of contempt were conclusive, a decree might lose all its vitality and not be enforced at all. The temptation, in many cases, to defeat the efficacy of a decree by sturdy denial of imputed contempt might be too strong for the virtue of a party. The rule therefore is regarded as well settled in England and in this country that in chancery testimony will be heard to contradict as well as to support the truth of a statement made by one against whom proceedings for contempt had been instituted." (Underwood's case, 2 Humph., 46, 49.)

In another chancery case, where there was no willful inten-
263 tion to disregard the court's authority or dignity, it was held that "the breach of the injunction consists in doing the forbidden thing and not in the intention with which it is done." (Thompson v. Penna. Railroad Co., 48 N. J. Eq., 105, 109.)

United States v. Anonymous (21 Fed. Rep., 761), an equity case, reviews the law of contempt exhaustively and affirms the rule in equity, citing many authorities. In the Debs case in the lower court (64 Fed. Rep., 724, 738) the chancery rule is again laid down, and in United States v. Sweeney (95 Fed. Rep., 434, 446, 447), a similar case in equity, the Debs decisions below and here are cited for that rule. Probably the reason why "in chancery they proceed differently" was always what it is stated to be in modern law—there may be no "wilful intention of disobeying the injunction," there may be an absence of wilful intention to contemn the court's dignity and authority and to disregard its order, and yet the court is warranted in taking action in personam, because, where there is the infringement of a private right it is no answer to the complaint of the injured party to say that the party inflicting the injury meant no dis-

respect to the court. At the same time in remedial as well as punitive contempt proceedings the court deals with the matter as affecting its dignity and power as well as an infringement of a private right. (Pitney, vice-chancellor, and authorities cited in Thompson v. Railroad Co., supra.)

264 "Without the power to enforce these decrees by punishing disobedience and violation of them, a court of chancery would be worse than useless, and for this reason, perhaps, the practice on the point we are considering differs from that of a court of common law." (Underwood's case, ut supra.)

But it is just as important to enforce the orders of a court of law by punishing disobedience and violation of them, and the authority of the court and the compulsions of the criminal law are quite as sacred as property rights. The "perhaps" in the above quotation and the "at least" of Justice Gray in Cartwright's case, infra, imply modern dissatisfaction with the distinction. It is not that the equity rule is wrong, but that the rule at common law ought to be the same.

Returning to the rule at law, it was thus referred to in Savin, petitioner, already frequently cited. It was there contended that the court should have required the service of interrogatories so that the respondent in answering them could purge himself of the contempt charged.

"The court could have adopted that mode of trying the question of contempt, but it was not bound to do so. It could, in its discretion, adopt such mode of determining that question as it deemed proper, provided due regard was had to the essential rules that obtain in the trial of matters of contempt. * * * If the appellant was entitled, of right, to purge himself under oath

265 of the contempt, that right was not denied to him; for it appears from the proceedings in the district court, made part of the petition for habeas corpus, not only that he was informed of the nature of the charges against him by the testimony of Flores, taken down by a sworn stenographer at the preliminary examination, but that he was present at the hearing of the contempt, was represented by counsel, testified under oath in his own behalf, and had full opportunity to make his defence." (Per Mr. Justice Harlan, 131 U. S., at pp. 278, 279.)

In other words, his oath did not clear him; he had full opportunity to make his defense, but he had to make it, and was adjudged guilty. That was a direct contempt, as was the offense in ex parte Terry and other cases before the court. The point seems never to have been squarely presented or adjudged in this court, either as to direct or constructive contempts, altho, of course, as to contempts in the face of the court no court would apply the common-law rule, but would construe the facts and determine wholly for itself and from its own observation. The point might have been adjudged, however, and the failure to raise and clearly decide it in constructive contempts or direct contempts not in actual presence of the court seems to show that the rule is by no means obvious and certain in recent times. For

instance, the point was manifest in In re Watts and Sachs (190
266 U. S., 1), a case of constructive contempt, and yet it was not made, and the case was argued and decided on the question of jurisdiction and the proposition that attorneys are not guilty of contempt for a mere error of judgment when advising in good faith. It is very clear that no one thought of invoking the common-law rule in that case, for the answers were traversed and oral and documentary evidence adduced, and petitioners were found guilty of contempt by the lower court. (190 U. S., at foot of p. 15.)

In People against Few and others (2 Johns., 289) the offense charged was characterized by the court as an "impropriety." In Matter of Moore and others (63 N. C., 397, 405, 406, 408) there was a political attack profest to have been directed against the individuals who were judges, and not to have been intended to impair the respect due to the court's authority. The court vindicated its power of self-protection, characterized the publication as libelous, but discharged the rule, saying:

"The law is well settled in this class of cases *where the intention to injure constitutes the gravamen.*

"The rule rests on sound reason. In this proceeding, as the court is judge in its own case in the *first* instance, where a case is made out in the judgment of the court, the party in the *last* instance is allowed to *try himself*. His *intention* is locked within his own breast, is known to himself alone, and he is permitted to purge himself
267 by his own avowal. He can not be convicted, *if he is innocent*, as he may be *by false evidence, before a jury*. For the court does not try him; he tries himself. C. J. Wilmot's Opinion 257–8, referred to on the trial of Judge Peck, 507. If the party, after the court decides against him, declines to *try himself*, it must be because *he knows himself to be guilty*."

The italics are the court's. The last sentence is significant here as showing that the court need not admit the purging force of the answer; it is within the discretion of the court; and that no defendant wishes his answer to be conclusive if the court decides against him on that denial, but wishes to go on and be tried. He naturally wishes then to adduce evidence himself.

The North Carolina case only shows that when the insult was disavowed the court acted with a high sense of generosity and decorum and excused. The respondent "is not acquitted, but is excused." That was far worse than an impropriety; it was a direct insult upon the judges, but it was not a crime. So in other cases: In re Walker, 82 N. C., 95, was not only a constructive contempt, but it was a technical and relatively trifling matter, an alleged obstruction of process without intentional disrespect. See State v. Earl (41 Ind., 464); Burke v. State (47 Id., 528); Haskett v. State (Id., 51, p. 176); Oster v. People (192 Ill., 473, 479), wherein it was said:

"In criminal contempts alleged to have been committed out of
268 the presence of the court, if the contemnor's answer is sufficient to acquit of the charge, he must be discharged." That means,

I think, that an answer consistently explaining the facts and denying intent is sufficient to excuse, not acquit; it does not mean that merely to deny the facts wholly acquits, where the gravamen is crime and a disclaimer of intention to commit contempt really plays no part. The intention to commit the crime and the commission of it (to be established by proof) dispose of any disclaimer of intention to commit contempt. At least that disclaimer can not be conclusive at this stage, but proof must be offered in support of it.

On the other hand, there are numerous authorities which refuse to follow the rule, e. g., Hughes v. People (5 Colo., 436), State v. Simmons (1 Ark., 265), Matter of Snyder (41 N. Y., 302). See also this case on appeal (103 N. Y., 178, 181) wherein the court said: "The surrogate was not necessarily concluded by these bald and uncorroborated assertions of the defaulting executor, and as the question is not only one to be determined upon evidence, at least conflicting, but also rests in discretion, which has not been unfairly exercised, we find no ground on which we can review his decision." Wise v. Chaney (Circuit Judge, 67 Iowa, 73) is a similar case. Crow v. The State (24 Tex., 12, 14) precisely rules the point, the court saying:

"The party is entitled to answer, and the answer should be under oath, showing cause, if any he can, why the judgment nisi
269 should not be made absolute but should be set aside. It is for the court to decide whether the answer purges the contempt or not. The court is not confined to the answer, but may hear other evidence upon the question of fact involved."

In Cartwright's case (114 Mass., 230) Mr. Justice Gray, as chief justice of the Supreme Judicial Court of Massachusetts, discusses the power to punish for contempt, and says:

"'As regards the question whether a contempt has or has not been committed, *it does not depend upon the intention of the party, but upon the act he has done.*' By Taney, C. J., in Wartman v. Wartman (Taney, 362, 370). In a court of chancery, *at least*, his oath is not conclusive in his favor, but may be contradicted by other evidence [citing King v. Vaughan, supra, among other authorities]. But in the present case his own testimony fails to clear him, etc."

(The italics are mine.) That is to say, Mr. Justice Gray does not appear to look with favor on the old rule in the courts of law and he approves the discretion which held that the respondent's contempt was not purged by his answer. The situation there suggests again that an answer to have this force must explain satisfactorily, must confess and avoid; bare denial is not enough. "A mere disclaimer of intention of contempt does not purge the contempt or relieve the party of the consequences of the act committed by him."
270 (Watson v. Bank, 5 S. C., 159, 182.) That case cites an equity authority, but was not itself an equity case.

"It is further claimed that the respondents, having been examined as witnesses under oath, and having testified that they acted in good faith and intended no disrespect to the court, thereby purged them-

selves of the contempt, and that no further proceedings could thereafter be had against them except a prosecution for perjury. That may be the practice in some jurisdictions, but we agree with the Supreme Court of New Hampshire that the better practice is to receive other testimony and settle the whole question of contempt in one proceeding." (Huntington v. McMahon, 48 Conn., 174, 200, 201, citing State v. Matthews, 37 N. H., 450.)

I submit that the following deductions from the foregoing review are sound:

The rule has shifted from the old common-law statement; on the whole, it is weakening; it is no longer true that bare denial of the fact suffices—either denial of the facts alleged or the factum of contempt existing in those facts. A respondent now sets forth by his answer his version of the facts, matters in extenuation, disclaimer of intention. It must be consistent and credible in itself; a court has discretion to construe and allow or reject it. Sometimes, in effect, the disclaimer is an apology to the court, which is received as matter of grace. The rule applies to matters technical in their bear-
271 ing and affecting official relations to the court, which often involve serious offenses, it is true, but not grave crimes. There is much conflict of authority thr'u'out this country, and many well-considered decisions reject the rule. Originally the rule seems to have applied exclusively to officers of the court, or of the executive, or to jurors, and to have related to minor matters not embracing the breach of an order by any person which led to a major crime. Probably at that time the rule had not been fully established that the power over contempts does not depend on the question whether the offense might or might not be punished by indictment. Indictment would be preferred, and such crimes would naturally go to prosecution in that course.

At all events, regarding the development of the power in contempt and of the rule since those days, it seems absurd to maintain now the distinction between courts of law and chancery, whatever the reasons for the distinction once were or however the distinction is now sustained for the benefit of property rights. That is to say, if to protect mere rights of property thru the equity jurisdiction an answer denying contempt in violating an injunction is not conclusive, why should it be conclusive in a court of law, proceeding, as it may, to vindicate its own dignity and authority and the sanctions of the criminal law? No valid reason can be given, and in these days the distinction should cease and the rule in equity be extended to the whole field.

272 This sheriff was an officer of the executive of the local government. I can not see why it is material to consider whether the court's order constituted him an officer pro hac vice of this court, or operated upon him as an individual citizen, being the officer of the State, who had legal custody of Johnson, or strictly as such officer. If the Government of the United States operates over every foot of American soil and upon every individual by means of physical force,

if necessary, how can it be doubted that within that power, and as a branch of it, this court's order went to Sheriff Shipp with sovereign force in whatever capacity he is regarded, having in fact the legal custody of the prisoner?

In Ex parte Siebold (100 U. S., 371, 395) the "official agents" of the United States happened to be officers of the United States, special deputy marshals appointed under an act of Congress, and the language just referred to was dealing with a possible clash between state and federal authority and the respective functions of the State and the nation as to the preservation of peace and good order. But was not Mr. Shipp an agent of this court when he received that order, and being such, was he not an official agent of the United States, even if he was not strictly an officer of the court or of the United States pro hac vice? Surely he was a person subject to the order of the court, and was an agent of the court for the purpose of obeying the order and carrying out its command by retaining the prisoner in safe custody.

273 The order of the Circuit Court was—

"That the petitioner be remanded to the custody of the sheriff of Hamilton County, Tenn., to be detained by him in his custody for a period of ten days, in which to enable the petitioner to prosecute an appeal from this order, if he may be advised that an appeal lies and may so choose, and in default of the prosecution of an appeal within said time, to be then further proceeded with by the state court under its sentence; the order on the sheriff to retain custody of the prisoner for the period of ten days for the purpose above mentioned being made on the application of the prisoner himself."

The order of this court was that "all proceedings against appellant be stayed and the custody of the said appellant be retained pending this appeal."

The authorities on the particular point are not numerous. Mr. Justice Story, in Randolph v. Donaldson (9 Cranch, 86), announced this rule:

"For certain purposes and to certain intents, the state jail lawfully used by the United States may be deemed to be the jail of the United States and that keeper to be keeper of the United States."

In a civil matter issuing in proceedings in contempt the Supreme Court of Illinois has held that—

"When a court makes an order appointing a particular person a depositary of the court funds, and such person, knowing of
274 such order, accepts the deposit, he unquestionably becomes pro hac vice an officer of the court." (In re Western Marine & Fire Ins. Co., 38 Ill., 289.)

But that case was distinguished, and the rule in that broad form somewhat doubted, in Southern Development Co. v. Railway Co. (27 Fed. Rep., 344), and Cartwright's case (ante) was also distinguished as being a case where there was no doubt about the official relation.

The point was nearly ruled in In re Birdsong (39 Fed. Rep., 599), wherein it was held that—

"For the purpose of safely keeping, properly caring for, and humanely treating prisoners committed to his custody by a court of the United States, a keeper of a county jail of a State, who receives such prisoners, and is paid for their maintenance, is an officer of the United States court." (Head note.)

Returning, in conclusion, to the rule and the view that at least a court has discretion to determine whether it will discharge upon the sworn answers—there is no doubt of this; it is an essential part of the court's unlimited power with respect to contempts. But it is impossible to suppose that this court would so exercise its discretion as to discharge at this stage upon bare denial defendants who, if guilty, according to one of their counsel, "deserve no quarter." That is a hard saying, too hard; but they would certainly deserve punish-
275 ment, and the Government is entitled to the opportunity to prove its case, and if proved to bring the defendants before the court for such penalty as it may see fit to impose. I take it to be conceded by the defendants that, assuming the facts alleged in the information to be true and the defendants to be guilty of the conspiracy and the crime perpetrated as charged, their acts were a "disobedience or resistance" of the order within the statute.

This was in strict law a constructive and not a direct criminal contempt, but its nature and circumstances make it quite as grave in essence as misbehavior in the face of the court. Flat disobedience of an order of the court by lawless persons at a distance, and collusion therewith, ending in a capital crime, are indeed much more serious than ordinary misbehavior and indecorum in the presence of the court. The import of the word "constructive" must be qualified by remembering that some constructive contempts are worse than direct contempts. There are interminable confusions and unwarranted distinctions in the law of contempts between ordinary and extraordinary, civil and criminal, direct and constructive, remedial and punitive; but this was aggravated, which makes it unnecessary to pursue the distinctions. There are many contempts "as aggravated as those directed at the court itself in open court." (United States v. Anonymous, supra, and instances noted, 21 Fed. Rep., at pp. 769, 770.)

276 Probably there is no case like this in the books; I can find none. But if a contempt should consist, as this one did, in a conspiracy to murder and in murder accomplished, or in arson, is it reasonable or possible to contend that a criminal may thus limit the power of punishment, and, because the proceeding is by contempt and not by indictment, deny his crime and then be liable to the bare possibility of the lighter charge of perjury? It is just about as reasonable to say that this should be his right under a plea of not guilty to an indictment.

In other words, a contempt committed by a crime is none the less a crime because it is a contempt (Deb's case, 64 Fed. Rep., at p. 753), and the court should deal with the acts as crime, although proceeding as for a contempt. It is to be remembered that this was not a

mere breach of injunction in equity; it was not only a "criminal contempt" in the narrow technical sense, it was the crime and sin of murder, whether or not the guilt of any defendant now before the court is established. The anomaly of "trying a man on his own oath," which Blackstone excused as in favor of liberty (4 Bl. Com., 287), ought not to survive into these days. This case shows that it is not in favor of liberty but in favor of crime.

HENRY M. HOYT,
Solicitor-General.

277 And afterwards, to-wit: On the 24th day of December, A. D. 1906, an opinion was filed in the words and figures following, viz:

278 Supreme Court of the United States.

No. 12. Original. October term, 1906.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL. } Information in contempt.

[December 24, 1906.]

Mr. Justice Holmes delivered the opinion of the court.

This is an information charging a contempt of this court, and is to the following effect. On February 11, 1906, one Johnson, a colored man, was convicted of rape, upon a white woman, in a criminal court of Hamilton County, in the State of Tennessee, and was sentenced to death. On March 3 he presented a petition for a writ of habeas corpus to the United States Circuit Court, setting up, among other things, that all negroes had been excluded, illegally, from the grand and petit juries; that his counsel had been deterred from pleading that fact or challenging the array on that ground, and also from asking for a change of venue to secure an impartial trial, or for a continuance to allow the excitement to subside by the fear and danger of mob violence; and that a motion for a new trial and an appeal were prevented by the same fear. For these and other reasons it was alleged that he was deprived of various constitutional rights, and was about to be deprived of his life without due process of law.

On March 10, after a hearing upon evidence, the petition was denied, and it was ordered that the petitioner be remanded to the custody of the sheriff of Hamilton County, to be detained by him in his custody for a period of ten days, in which to enable the petitioner to prosecute an appeal, and in default of the prosecution of the appeal within that time to be then further proceeded with by the State court under its sentence. On March 17 an appeal to this court was allowed by Mr. Justice Harlan. On the following Monday, March

19, a similar order was made by this court, and it was ordered further "that all proceedings against the appellant be stayed and the custody of said appellant be retained pending this appeal."

The sheriff of Hamilton County was notified by telegraph of the order, receiving the news before six o'clock on the same day. The evening papers of Chattanooga published a full account of what this court had done. And it is alleged that the sheriff and his deputies were informed, and had reason to believe, that an attempt
279 would be made that night by a mob to murder the prisoner. Nevertheless, if the allegations be true, the sheriff early in the evening withdrew the customary guard from the jail and left only the night jailer in charge. Subsequently, it is alleged, the sheriff and the other defendants, with many others unknown, conspired to break into the jail for the purpose of lynching and murdering Johnson, with intent to show contempt for the order of this court and for the purpose of preventing it from hearing the appeal and Johnson from exercising his rights. In furtherance of this conspiracy a mob, including the defendants, except the sheriff, Shipp, and the night jailer, Gibson, broke into the jail, took Johnson out and hanged him, the sheriff and Gibson pretending to do their duty, but really sympathizing with and abetting the mob. The final acts, as well as the conspiracy, are alleged as a contempt.

The defendants have appeared and answered, and certain preliminary questions of law have been argued which it is convenient and just to have settled at the outset before any further steps are taken. The first question, naturally, is that of the jurisdiction of this court. The jurisdiction to punish for a contempt is not denied as a general abstract proposition, as, of course, it could not be with success. Ex parte Robinson, 19 Wall., 505, 510. Ex parte Terry, 128 U. S., 289, 302, 303. But it is argued that the Circuit Court had no jurisdiction in the habeas corpus case, unless Johnson was in custody in violation of the Constitution, Rev. Sts., § 753, and that the appellate jurisdiction of this court was dependent on the act of March 3, 1891, c. 517, § 5 (26 Stat., 827), Ex parte Lennon, 150 U. S., 393, and by that act did not exist unless the case involved 'the construction or application of the Constitution of the United States.' If the case did not involve the application of the Constitution, otherwise than by way of pretense; it is said that this court was without jurisdiction, and that its order might be condemned with impunity. And it is urged that an inspection of the evidence before the Circuit Court, if not the face of the petition, shows that the ground alleged for the writ was only a pretense.

We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. Ex parte Sawyer, 124 U. S., 200. Ex parte Fisk, 113 U. S., 713. Ex parte Rowland, 104 U. S., 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone,

could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan, 111 U. S., 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to
280 make orders to preserve the existing conditions and the subject of the petition, just as the State Court was bound to refrain from further proceedings until the same time. Rev. Sts., § 766. Act of March 3, 1893, c. 226, 27 Stat., 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it. Of course the provision of Rev. Sts., § 766, that until final judgment on the appeal further proceedings in the State Court against the prisoner shall be deemed void, applies to every case. There is no implied exception if the final judgment shall happen to be that the writ should not have issued or that the appeal should be dismissed.

It is proper that we should add that we are unable to agree with the premises upon which the conclusion just denied is based. We cannot regard the grounds upon which the petition for habeas corpus was presented as frivolous or a mere pretense. The murder of the petitioner has made it impossible to decide that case, and what we have said makes it unnecessary to pass upon it as a preliminary to deciding the question before us. Therefore we shall say no more than that it does not appear to us clear that the subject-matter of the petition was beyond the jurisdiction of the Circuit Court, and that, in our opinion, the facts that might have been found would have required the gravest and most anxious consideration before the petition could have been denied.

Another general question is to be answered at this time. The defendants severally have denied under oath in their answer that they had anything to do with the murder. It is urged that the sworn answers are conclusive, that if they are false the parties may be prosecuted for perjury, but that in this proceeding they are to be tried, if they so elect, simply by their oaths. It has been suggested that the court is a party and therefore leaves the fact to be decided by the defendant. But this is a mere afterthought to explain something not understood. The court is not a party. There is nothing that affects the judges in their own persons. Their concern is only that the law should be obeyed and enforced, and their interest is no other than that they represent in every case. On this occasion we shall not go into the history of the notion. It may be that it was an intrusion or perversion of the canon law, as is suggested by the propounding of interrogatories and the very phrase, purgation by oath; (juramentum purgatorium,). If so, it is a fragment of a system of proof which does not prevail in theory or as a whole, and the reason why it has not disappeared perhaps may be found in the rarity with which contempts occur. It may be that even now, if the sole question were the

intent of an ambiguous act, the proposition would apply. But in this case it is a question of personal presence and overt acts. If the presence and the acts should be proved there would be little room for the disavowal of intent. And when the acts alleged consist in taking part in a murder it cannot be admitted that a general denial
281 and affidavit should dispose of the case. The outward facts are matters known to many and they will be ascertained by testimony in the usual way.—The question was left open in Ex parte Savin, 131 U. S. 267, with a visible leaning toward the conclusion to which we come, and that conclusion has been adopted by State courts in decisions entitled to respect. Huntington v. McMahon, 48 Conn. 174, 200, 201. State v. Matthews, 37 N. H. 450, 455. Bates's Case, 55 N. H. 325, 527. Matter of Snyder, 103 N. Y. 178, 181. Crow v. State, 24 Tex. 12, 114. State v. Harper's Ferry Bridge Co., 16 W. Va. 864, 873. See Wartman v. Wartman, Taney, 362, 370. Cartwright's Case, 114 Mass. 230. Eilenbecker v. Plymouth County, 134 U. S. 31. Whether or not Rev. Sts. § 725 applies to this court, it embodies the law so far as it goes. We see no reason for emasculating the power given by that section, and making it so nearly futile as it would be if it were construed to mean that all contemnors willing to run the slight risk of a conviction for perjury can escape.

The question was touched, in argument, whether the acts charged constitute a contempt. We are of opinion that they do, and that their character does not depend upon a nice inquiry, whether, after the order made by this court, the sheriff was to be regarded as bailee of the United States or still held the prisoner in the name of the State alone. Either way, the order suspended further proceedings by the State against the prisoner and required that he should be forthcoming to abide the further order of this court. It may be found that what created the mob and led to the crime was the unwillingness of its members to submit to the delay required for the trial of the appeal. From that to the intent to prevent that delay and the hearing of the appeal is a short step. If that step is taken the contempt is proved.

These preliminaries being settled the trial of the case will proceed.

Mr. Justice Moody took no part in the decision.

(Endorsed:) No. 12. Original. United States v. Shipp et al. Opinion per Mr. Justice Holmes. Filed Dec. 24, 1906.

282 And on the same day, to wit, the 24th day of December, A. D. 1906, the following entry appears of record:

283 THE UNITED STATES OF AMERICA, complainant, *vs.* JOHN F. SHIPP ET AL. } No. 12. Original.

The opinion of the court on the preliminary questions of law herein was delivered by Mr. Justice Holmes (Mr. Justice Moody took no part) and the cause was ordered to proceed.

DECEMBER 24, 1906.

284 And afterwards, to wit, on the 14th day of January, A. D. 1907, a motion to arrest defendants and require recognizances was filed, in the words and figures following, viz:

285 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP ET AL.

Motion to arrest defendants and require recognizances to abide the future orders of the court.

286 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP ET AL.

Motion to arrest defendants and require recognizances to abide the future orders of the court.

The court having decided the preliminary questions of law herein against the defendants and ordered the case to proceed, the Attorney-General moves the court to order writs of attachment to issue that the said defendants may be brought into court and required to enter into recognizances, in such sums, respectively, as to the court shall seem adequate and proper, conditioned for their appearance whenever required and to abide the future orders of the court herein, said recognizances to be given, with good and sufficient sureties, approved by this court, unless it shall seem to the court appropriate that the said defendants, or any of them, should be permitted to appear and furnish such recognizances before the judge of the Circuit
287 Court of the United States for the Eastern District of Tennessee, in conformity with or analogy to the provisions of section 1014 of the Revised Statutes of the United States, in which event it is further moved that the sureties be approved by the said judge and by the justice of this court assigned to the Sixth Circuit.

CHARLES J. BONAPARTE,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

288 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainant, v. John F. Shipp et al. Motion to arrest defendants and require recognizances to abide the future orders of the court. Filed Jan. 14, 1907.

289 And on the same day, to wit, on the 14th day of January, A. D. 1907, a motion for summoning of witnesses and to take testimony was filed, in the words and figures following, viz:

290 In the Supreme Court of the United States. October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP ET AL.

Motion for the summoning of witnesses and to take testimony herein.

291 In the Supreme Court of the United States. October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP ET AL.

Motion for the summoning of witnesses and to take testimony herein.

In order that the facts may be ascertained by the court as to the connection of the defendants herein with the matters which the court has held constituted contempt of its authority, the Attorney-General moves the court to take testimony herein as to the complicity of the defendants in such matters, and to examine, under oath, to be administered by the court, any witnesses ordered to be summoned in behalf of the United States or of the defendants, subpœnas therefor to be issued by the clerk of this court, with full rights of cross-examination and objection as to the admission of evidence and the competency of witnesses to counsel for both parties; such evidence to be taken in open court unless it shall appear to the court
292 appropriate to appoint a commissioner or examiner to receive and record the same, and then to report such testimony, with any exceptions thereto made as aforesaid, forthwith to the court.

CHARLES J. BONAPARTE,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

293 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainant, v. John F. Shipp et al. Motion for the summoning of witnesses and to take testimony herein. Filed Jan. 14, 1907.

294 And on the same day, to wit, on the 14th day of January, A. D. 1907, motions for summoning of witnesses for certain defendants at government expense were filed in the words and figures following, viz:

295 Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

Motion for the summoning of witnesses for certain defendants at the expense of the Government.

JUDSON HARMON,
ROBERT PRITCHARD,
JAMES J. LYNCH,
M. H. CLIFT,
ROBERT B. COOKE,
Attorneys for Sheriff Shipp and His Deputies.

296 October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

The defendants Frank Jones, Mat L. Galloway, C. A. Baker, Thomas B. Taylor, George W. Brown, Jeremiah Gibson, Fred Frawley, Marion Perkins, and Joseph C. Clark move the honorable court by analogy to section 878, Revised Statutes, for the reasons and on account of the facts stated in the affidavits herewith filed, and numbered from 1 to 9, inclusive, that the witnesses whose names are here set forth in said affidavits, and who are residents of the Southern Division of the Eastern District of Tennessee, viz, S. W. Ault, Jack Tipton, R. S. Brown, W. H. Hartman, Mrs. Nina Hartman, Jeremiah Gibson, Mrs. Ella Taylor, George E. Coster, Dr. A. W. Palmer, Joe Hodges, J. H. Jeanatt, J. Y. McDaniels, Col. T. E. Patterson, W. T. Hayes, Oscar Yarnell, Sherman Beck, George Gahagan, L. G. Frawley, N. I. Schwartz, W. E. Stage, Jeremiah Gibson, George D. Rogers, L. B. Hatcher, and others, whose names are not known at present, but will be furnished, if necessary; W. A. Clark, T. A. Clark, Gilbert

Snyder, Boyd Dickson, Mrs. Mary E. Clark and Phama Clark, N. I. Schwartz, W. E. Stage, George D. Rogers, L. B. Hatcher, Fred A. Frawley, Charles Baker, James Elliott, Frank Wallace, George Kirklin, Joe Shipp, jr., Thomas Sholes, Kid Harkins, George Gahagan, George Lebeau, James Elliott, John Sleay, I. N. Schwartz, and William Viox, be ordered to be subpœnaed to attend at such time and place as the court may designate for hearing the testimony in
297 this cause, and that it be ordered by the court that the costs incurred by the process of subpœna, including the fees and mileage of said witnesses, be paid by the United States, in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States, or in lieu of this that the court, if it deems the same expedient, direct that the testimony be taken in this cause by a commissioner duly appointed and to sit at Chattanooga or some other designated point in the Southern Division of the Eastern District of Tennessee.

JUDSON HARMON,
ROBERT PRITCHARD,
JAMES J. LYNCH,
M. H. CLIFT,
ROBERT B. COOKE,
Attorneys for Sheriff Shipp and His Deputies.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared George W. Brown, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses are material to his defense, viz: S. W. Ault, Jack Tipton, R. S. Brown, W. H. Hartman, Mrs. Nina Hartman, and Jeremiah Gibson; that he cannot go safely to trial without them or their testimony; that he expects to prove by said witnesses that on the evening of the night of March the 19th, 1906, about fifteen minutes after six o'clock, he, with his wife, left the county jail
298 of Hamilton County, Tennessee, to go over into Hill City, to take supper with his father, attend church in Hill City that night, as his children were at his father's, having gone over about one o'clock in the afternoon; that he remained at his father's all night, and was not in the city of Chattanooga or at the county jail during the night, or until about six o'clock the next morning, and knew nothing of the alleged mobbing of Ed Johnson until after he had left his father's, on his way to the county jail, after boarding the car coming into the city, and that he was not at or near the county jail or the place where said Ed Johnson was lynched or hanged; that he had no idea or information that such lynching would take place at that time.

All of said witnesses are residents of Hamilton County, Tennessee, in the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

GEO. W. BROWN.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

299 October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Thomas B. Taylor, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses, Ella Taylor, George E. Coster, Dr. A. W. Palmer, Joe Hodges, J. H. Jeanatt, J. Y. McDaniels, Col. T. E. Patterson, W. T. Hayes, Oscar Yarnell, Geo. Gahagan, and Sherman Beck, are material witnesses in his defense; that he cannot go safely to trial without them or their testimony; that he expects to prove by said witnesses that on the night of March 19, 1906, his whereabouts during the night; first, that at the time the alleged lynching of Ed Johnson is said to have taken place he was in Hill City attending an Odd Fellows' entertainment; that he remained there until about fifteen minutes after ten o'clock, when he took the ten-fifteen car for home, reaching home about eleven-fifteen; that he had nothing in the world to do with the lynching of Ed Johnson and no knowledge that it was likely to take place, and hopes to be able to prove other facts by these witnesses important to his defense, and that he has nothing to do with the sheriff's office or the serving of process or things of that sort, as he is simply appointed as engineer in charge of the power plant.

All of said witnesses are residents of Hamilton County, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is
300 actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed and direct that the costs incurred by the process and the fees of the witness shall be

paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

T. B. TAYLOR.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Fred A. Frawley, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, L. G. Frawley, N. I. Schwartz, W. E. Stage, Jeremiah Gibson, George D. Rogers, L. B. Hatcher, and others, are material witnesses for his defense, and that he cannot go to trial safely without their testimony; that he expects to prove by said witnesses that on the evening of the night and the night of March the 19th, 1906, he was not at the county jail of Hamilton County at the time the alleged mob is said to have visited said jail and executed Ed Johnson; that he knew nothing of the organization of the mob or that it was anticipated that there would be a mob on that night; that he expects to prove his whereabouts at
301 the time the lynching is said to have occurred, and that he was not at the jail nor with the mob.

All of said witnesses are residents of Chattanooga, Tennessee, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in cases of witnesses subpœnaed in behalf of the United States.

F. A. FRAWLEY.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Joseph C. Clark, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, W. A. Clark, T. A. Clark, Gilbert Snyder, Boyd Dickson, Mrs. Mary E. Clark, and Phama Clark, are material witnesses for defense, and that he cannot go safely to trial without their testimony; that he expects to prove by said wit-
302 nesses that on the evening and the night of March the 19th, 1906, he was not at the county jail of Hamilton County; was not with the alleged mob; knew nothing of the same until after the lynching is said to have taken place; that he in no way participated therein or had any knowledge of the existence of said mob until after the alleged lynching is said to have taken place; that he was not the deputy sheriff at that time.

All of said witnesses reside in Hamilton County, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

JOSEPH C. CLARK.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Mat L. Galloway, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, N. I. Schwartz, W. E. Stage, George D. Rogers, L. B. Hatcher, Fred A. Frawley, Charles
303 Baker, Marion Perkins, James Elliott, and others, whose names are not at present known, are material witnesses in behalf of defendants, and that he cannot go safely to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March the 19th, 1906; that he was not at the county jail of Hamilton County, or with the alleged mob, and knew nothing of a mob being organized or of its acts until after they had broken into the jail and removed prisoner Ed Johnson therefrom, when he first heard of the existence of the mob, and that he had nothing to do with the same and in no way participated with it and was entirely ignorant of its existence until informed as above stated.

All of said witnesses reside in Hamilton County, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays

the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

MATT. L. GALLOWAY.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

304 October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Marion Perkins, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, Frank Wallace, George Kirklin, Joe Shipp, jr., Thomas Sholes, Kid Harkin, George Gahagan, and others, whose names are not at present known to him, are material witnesses in his behalf on the trial of this cause, and that he cannot safely go to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March the 19th, 1906, prior and up until after the lynching of said Ed Johnson; that he was not at the county jail of Hamilton County or with said alleged mob; knew nothing of its being organized or of its acts until after they had broken into the jail and removed the prisoner, Ed Johnson, therefrom; that he had in his charge a prisoner whose name was ——— ——— (at present unable to recall the name), whom he carried before a justice of the peace for Hamilton County in the early part of the night of the 19th of March, 1906, where he was tried and committed to the county jail; that when he arrived at the county jail he found out for the first time that the jail had been broken open and the prisoner, Ed Johnson, removed therefrom, and that he had nothing to do with said mob and no idea that the mob would be organized that night and is in no way guilty of the charges specified in the information in this case.

305 All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

MARION PERKINS.

Sworn to and subscribed before me this 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Charles A. Baker, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, George Lebeau, James Elliott, John Sleay, and I. N. Schwartz, William Viox and others, whose names are not known at present, are material witnesses in his behalf on the trial of this cause, and that he cannot safely go to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March 19, 1906, prior to
306 and up until after the lynching of said Ed Johnson; that he was not at the county jail of Hamilton County, or with said alleged mob, and knew nothing of its organization or that it was expected or anticipated that a mob would be organized on that night, until, as he was informed, after the same had broken into and removed said Ed Johnson therefrom; that he had heard of no rumor or threats of mobbing the said Johnson, or any one else on that night, and was not at the jail at the time the mob was there, and knew nothing of it, as before stated, until after it had executed its purpose.

All of said witnesses reside in Hamilton County, within the Southern Division of the Eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

C. A. BAKER.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

307 (Endorsed:) Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainant, vs. John F. Shipp et al. Motion for the summoning of witnesses for certain defendants at the expense of the Government. Filed Jan. 14, 1907.

308 Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Motion for the summoning of witnesses for defendant William Marquette at the expense of the Government.

JOE V. WILLIAMS,
Attorney for Defendant William Marquette.

309 October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

The defendant, William Marquette, moves the court by analogy to section 878, Revised Statutes, for the reasons and on account of the facts stated in the affidavit of said Marquette, herewith filed and made a part hereof, that the witnesses whose names are set forth in said affidavit, and who are residents of the Southern Division of the Eastern District of Tennessee, to wit, Dr. M. L. Crum, Dr. E. C. Johnson, Dr. Cooper Holtzclaw, L. B. Coleman, W. D. Bowers, H. M. Allen, Charles Karston, Robert S. Mastin, F. A. Frawley, J. G. Richardson, and H. D. Rider, be ordered to be subpœnaed to attend at such time and place as the court may designate for hearing of testimony in this cause, and that it be ordered by the court that the costs incurred by the process of subpœna, including the fees and mileage of said witnesses, be paid by the United States in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States, or that in lieu of this that the court, if it deems the same expedient, direct that the testimony to be taken in this cause be taken by a commissioner duly appointed and to sit in the Southern Division of the Eastern District of Tennessee.

JOE V. WILLIAMS,
Attorney for Defendant.

310 October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared William Marquette, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense, namely, Dr. M. L. Crum, Dr. E. C. Johnson, Dr. Cooper Holtzclaw, L. B.

Coleman, W. D. Bowers, H. M. Allen, Charles Karston, Robert S. Mastin, F. A. Frawley, J. G. Richardson, and H. D. Rider; that he cannot go safely to trial without them; that he expects to prove by said witnesses that on the night of March 19, 1906, he was at the office of Dr. Cooper Holtzclaw and at other places at and during the time said Ed Johnson was hanged on said date; that he was not on said night at or near the county jail or at or near the place where the said Ed Johnson was hanged, and that he had no connection whatever therewith.

All the said witnesses are residents of Chattanooga, within the Southern Division of the Eastern District of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

WILLIAM MARQUET.

Sworn and subscribed to before me this 11th day of January, 1907.

[SEAL.] CHAS. WATSON,
Notary Public.

311 (Endorsed:) Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America vs. John F. Shipp et al. Motion for the summoning of witnesses for defendant William Marquette at the expense of the Government. Filed Jan. 14, 1907.

312 Supreme Court of the United States. October term, 1906.
No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

Motion for the summoning of witnesses for certain defendants at the expense of the Government.

LEWIS SHEPHERD,
MARTIN A. FLEMING,
T. POPE SHEPHERD,
G. W. CHAMLEE,
Attorneys for Defendants, John Varnell et al.

313 October Term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

The defendants, John Varnell, Henry Padgett, John Jones, Wm. Mayes, Claude Powell, Bart Justice, Chas. J. Powell, Alfred Handmond, Nick Nolan, Paul Werner, and Luther Williams, move the court, by analogy to section 878, Revised Statutes, for the reasons and on account of the facts stated in the affidavits herewith filed, and numbered from 1 to 11, inclusive, that the witnesses whose names are set forth in said affidavits, and who are residents of the southern division of the eastern district of Tennessee, viz, C. S. Skillern, Dr. T. E. Abernathy, Claude F. Ramsey, Miss Vera Varnell, Will George, Clint Chambers, Dave McJunkins, Tom Duckworth, E. L. Shepherd, B. F. Kerr, Francis C. Mayes, Durrah Lieb, Albert Lieb, Patrick Kuntz, Chris Mattell, Jim James, Luther Raulston, Emma Justice, Earnest Sholtz, Clift Hensley, Gus Hall, Wm. Hodgson, O. E. Pooler, John Kean, Mrs. Kelly O'Rear, Miss Fannie Dempsey, Jno. Vogt, Alfred Smith, Jno. W. Nolan, C. W. Conner, Mrs. Lula Conner, Mrs. Thersa Werner, A. R. Moss, and Fred Watkins, be ordered to be subpœnaed to attend at such time and place as the court may designate for hearing the testimony in this cause, and that it be ordered by the court that the costs incurred by the process of subpœna, including the fees and mileage of said witnesses, be paid by the United States in the same manner that similar costs and fees are paid in case of wit-

314 nesses subpœnaed in behalf of the United States, or that in lieu of this that the court, if it deems the same expedient, direct that the testimony to be taken in this cause be taken by a commissioner duly appointed and to sit in the southern division of the eastern district of Tennessee.

LEWIS SHEPHERD,
MARTIN A. FLEMING,
T. POPE SHEPHERD,
G. W. CHAMLEE,
Attorneys.

No. 1.

October Term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared John Varnell, one of the defendants in the above-styled cause, who made oath as follows: That the following witnesses are material to his defense, viz, C. S. Skillern, Dr. T. E. Abernathy, Claude F. Ramsey, and Miss Vera Varnell; that he cannot go safely to trial without them; that he expects to prove by said witnesses that on the night of March 19, 1906,

he was at home with his daughter, who was critically ill; that on said date he went to his home shortly after 3 o'clock p. m. and remained at home all night, until near 5 o'clock a. m. the following morning; that he was not at or near the county jail nor at or near the place where said Ed Johnson was hanged on said date.

All of said witnesses are residents of Chattanooga, within the southern division of the eastern district of Tennessee.

315 That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct [illegible] costs incurred by the process and the fees of the witnesses [illegible] paid in the same manner that similar costs and fees are pa[illegible]ase of witnesses subpœnaed in behalf of the United States.

JOHN VARNELL.

Subscribed and sworn to before me this the 10th day of January, 1907.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

No. 2.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Henry Padgett, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense, viz, Will George, Clint Chambers, Dave McJunkins, and Tom Duckworth; that he cannot go safely to trial without them; that he expects to prove by said witnesses that on the 19th of March, 1906, the date Ed Johnson was lynched, he was at the Stag Hotel, on Market street, in Chattanooga, from the hour of 7 o'clock p. m. until near midnight of said date; that he was not at or near the county jail nor at or near

316 the place where Ed Johnson was hanged on said date; that he knew nothing of the mob nor the lynching of Ed Johnson until the following morning.

All of said witnesses are residents of Chattanooga, within the southern division of the eastern district of Tennessee.

That defendant is not possessed of sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses summoned in behalf of the United States.

HENRY PADGETT.

Sworn to and subscribed before me this 10th day of January, 1907.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

No. 3.

No. 4.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Personally appeared before the undersigned Wm. Mayes, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense, viz,
317 Frances C. Mayes, Durrah Lieb, and Albert Lieb; that he can not go safely to trial without them; that he expects to prove by said witnesses that on March 19, 1906, he went to his home on Poplar street, in Chattanooga, before 7.30 o'clock p. m., and remained at home with his family until the following morning; that he was not at or near the county jail nor at or near the place where Ed Johnson was hanged on said date.

All these witnesses are residents of Chattanooga, within the Southern Division of the Eastern District of Tennessee.

That affiant is not possessed of sufficient means and is actually unable to pay fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

WILLIAM MAYES.

Sworn to and subscribed before me this 10th day of January, 1907.

[SEAL.]

WILLIAM C. SHEPHERD,
Notary Public.

No. 5.

October Term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Personally appeared before the undersigned Claude Powell, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense,
318 viz, Patrick Kuntz and Chris Mattell; that he cannot go safely to trial without them; that he expects to prove by said witnesses that on the 19th of March, 1906, the date of Ed Johnson was lynched, that he left his place of business and went to the place of business of Richard Averett, on 8th street, in the city of Chattanooga, where he met Patrick Kuntz, and was with him at said

Averett's and on 8th and 9th streets, in said city, until after the hour of ten-thirty o'clock p. m. About 10.30 o'clock p. m. of said date, on the corner of 9th and Market streets, he met the witness, Chris Mattell, who told him that Ed Johnson had been taken from the jail and hanged; that he was not at or near the county jail nor at or near the place where said Johnson was hanged on said date.

All of said witnesses are residents of Chattanooga, within the Southern Division of the Eastern District of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

CLAUDE POWELL.

Sworn to and subscribed before me this 10th day of January, 1907.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

319 No. 6.

October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Bart Justice, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense, viz, Jas. James, Luther Rawlston, and Emma Justice; that he cannot go safely to trial without them; that he expects to prove by said witnesses that on the 19th of March, 1906, he went to his home, in St. Elmo, about 4.30 o'clock p. m.; that about 7.30 p. m. he went to the home of witness James James and remained there until about 10.30 o'clock p. m. At that time he went to his home and remained there until the following morning; that he was not at or near the county jail nor at or near the place where Ed Johnson was hanged on said date.

All of said witnesses are residents of Chattanooga and within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

BART JUSTICE.

Sworn to and subscribed before me this 10th day of January, 1907.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

320 No. 7.

October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Personally appeared before the undersigned Chas. J. Powell, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense, viz., Ernest Scholze, Clift Henseley, and Gus Hall; that he cannot go safely to trial without them; that he expects to prove by said witnesses tha n the 19th of March, 1906, he was at work at the Chattanooga packing house from early morning until 11 o'clock p. m. After leaving his work he went to his home, where he remained until the next morning; that he was not at or near the county jail, nor at or near the place where Ed Johnson was lynched on said date.

All of said witnesses are residents of Chattanooga, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees in case of witnesses subpœnaed in behalf of the United States.

CH. POWELL.

Sworn to and subscribed before me this 10th day of January, 1907.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

321 No. 8.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Alfred Handman, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense, viz, Wm. Hodgson, O. E. Pooler, Jno. Kean, Mrs. Kelly O'Rear, and Miss Fannie Dempsey; that he can not go safely to trial without them; that he expects to prove by said witnesses that on the 19th of March, 1906, the date when Ed Johnson was hanged by a mob, he was at the saloon of Ransom and Company, on Market street, in the city of Chattanooga, from the hour of 8 o'clock p. m. until the hour of 10 o'clock p. m. After leaving said saloon he went to fire hall No. 1,

on Carter street, in said city, where he remained until about 10.30 o'clock p. m., at which time he went to the home of Mrs. Kelly O'Rear, on Gillespie street, in said city, where he remained until the following morning.

All of said witnesses are residents within the Southern Division of the Eastern District of Tennessee.

That affiant is not possessed of sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

ALFRED HANDMAN.

322 Subscribed and sworn to this the 10th day of January, 1907.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

No. 9.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Personally appeared before the undersigned Nick Nolan, one of the defendants in the above-styled cause, and made oath as follows:

That the following witnesses are material to his defense, viz: Jno. Vogt, Alfred Smith, and Jno. W. Nolan; that he can not go safely to trial without them; that he expects to prove by said witnesses that on the 19th of March, 1906, the date Ed Johnson was lynched, he was at his place of business on Whiteside street, in South Chattanooga, from 7 o'clock p. m. until about 9.30 o'clock p. m.; that at that time he left his place of business and went to the saloon of Jno. W. Nolan, where he remained until after 10 o'clock p. m., at which time he went to his home, on Aiken street, in South Chattanooga, where he remained until next morning; that he was not at or near the county jail nor at or near the place where the said Ed Johnson was lynched on said date.

All of said witnesses are residents of Chattanooga, within the Southern Division of the Eastern District of Tennessee.

Affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to
323 order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

NICK NOLAN.

Subscribed and sworn to before me this 10th day of January, 1907.

[SEAL.] WILLIAM C. SHEPHERD,
Notary Public.

No. 10.

In the Supreme Court of the United States, October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET ALS.

Paul Werner, one of the defendants in the above-styled cause, makes oath that he has not the means and is unable to pay the expenses of his witnesses from Chattanooga, Tennessee, to Washington, D. C., and that he can prove by C. W. Connor, Mrs. Lula Connor, and Mrs. Theresa Werner that he was at his home, 613 East 5th street, in the city of Chattanooga, Tennessee, from about half after eight o'clock p. m. on the night Ed. Johnson was lynched until the next morning, and that he had no part in the lynching of Ed. Johnson.

PAUL WERNER.

Sworn to and subscribed before me January 9, 1907.

[SEAL.]

W. F. CHAMLEE,
Notary Public.

324

No. 11.

In the Supreme Court of the United States, October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET ALS.

Luther Williams, one of the defendants in the above-styled cause, makes oath in due form of law that he has not the means and is unable to pay the expenses of his witnesses from Chattanooga, Tenn., to Washington, D. C., and that he can prove by A. R. Moss and Fred Watkins that he was at his place of business, at No. 630 Market street, until after the mob had assembled at and was breaking into the county jail to lynch Ed. Johnson; that up to this time they were in company with defendant and know he took no part in the lynching. It is material for defendant to have their evidence in his defense.

LUTHER WILLIAMS.

Sworn to and subscribed before me January 9, 1907.

[SEAL.]

W. F. CHAMLEE,
Notary Public.

325 (Endorsed:) Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainant, *vs.* John F. Shipp et al. Motion for the summoning of witnesses for certain defendants at the expense of the Government. Filed Jan. 14, 1907.

326 And on the same day, to wit, on the 14th day of January, A. D. 1907, the following entries appear of record, viz:

327 THE UNITED STATES OF AMERICA, complainant, *vs.* JOHN F. SHIPP ET AL. | No. 12. Original.

Mr. Attorney-General Bonaparte, of counsel for the complainant, submitted to the consideration of the court a motion to arrest the defendants herein and to require them to enter into recognizances to abide the future orders of the court.

JANUARY 14, 1907.

328 THE UNITED STATES OF AMERICA, complainant, *vs.* JOHN F. SHIPP ET AL. | No. 12. Original.

Mr. Attorney-General Bonaparte, of counsel for the complainant, submitted to the consideration of the court a motion as to taking testimony herein, and leave was granted to counsel for defendants to file a brief in reply thereto.

JANUARY 14, 1907.

329 And afterwards, to wit, on the 17th day of January, A. D. 1907, a brief for defendants was filed in the words and figures following, viz:

Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant, *vs.* JOHN F. SHIPP ET AL.

Brief for Joseph F. Shipp et al. on motions for orders of arrest and for taking testimony.

JUDSON HARMON,
Counsel for Joseph F. Shipp et al.

CLIFT AND COOKE,
ROBERT PRITCHARD,
Of Counsel.

330 Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Brief for Joseph F. Shipp et al. on motions for orders of arrest and for taking testimony.

MOTION FOR ARREST, &C.

The only object of issuing attachments is to bring before the court the parties charged with contempt so that they may be heard, if defense they have (Rapalje on Contempts, sec. 100).

This course is discretionary with the court when there is any other mode of procedure open. The usual practice is by a rule to show cause (id., sec. 9, 103; U. S. vs. Anonymous, 21 Fed., 761).

The Government did not ask for attachments in the information, but very properly followed the usual practice, praying only
331 for the issuance and service of "a rule to show cause, if any there be, on a day certain, why said defendants and each of them should not be punished as and for a contempt of this honorable court" (Inf., p. 10).

According to some authorities the personal appearance of the parties might have been required (Rapalje on Contempts, sec. 109). But the Government acquiesced in their appearance by counsel and by answers personally signed and verified.

The preliminary matters set up in those answers have been held insufficient cause, and the proceeding now stands as to each defendant on his denial, under positive oath, of the offense charged. This is surely sufficient cause as against an information verified only on information and belief (Inf., p. 11) until the Government produces proof. We submit that the production of that proof is now the only course open to it.

The Government has waived its right to an interlocutory attachment, if it had such right. It has waived the personal attendance of the defendants in answer to the rule. Now, as against their sworn denials, it asks, merely on its naked information, that the defendants be arrested and committed in default of bail. There is no attempt to show any facts to justify a different course from that taken in the prayer of the information.

We submit that to grant this motion would subject the defendants to hardship and indignity which the state of the record does not justify and which would violate the presumption of innocence this court has so strongly upheld.

As to Joseph F. Shipp, sheriff, and his deputies, all this has peculiar force. They are officers of justice of the State of Tennessee. Their time is required in the service of the courts and the preservation of the peace in that State. Courtesy to the State and the tri-

bunals they serve makes regard for the presumption of their innocence highly appropriate as well as just.

332 MOTION TO TAKE TESTIMONY.

We consent, of course, to the taking of testimony. We consent, too, for the convenience of the court, that the testimony be taken by some disinterested person to be appointed by the court for that purpose.

We pray, however, that the person so appointed be directed to take the testimony at Chattanooga, where all the witnesses on both sides reside. If it should be found that any reside elsewhere we consent to taking their testimony wherever desired.

I am informed and believe, and so state to the court, that the defendants are almost without exception unable to bear the expense of traveling to Washington and remaining there during the hearing, as they would have to do or submit to a practical denial of justice. To compel them to attend a hearing away from home would be in itself a severe punishment, and trial should precede punishment. The analogies of the Constitution and the laws, too, make the place where the offense is charged to have been committed the appropriate one for the taking of the proof. As the sheriff and all his deputies are parties, their absence from their homes would also work harm to the course of business in the courts and to the preservation of the peace of their county.

Respectfully submitted.

JUDSON HARMON,
For Joseph F. Shipp and Others.

CLIFT & COOKE,
ROBERT PRITCHARD,
Of Counsel.

333 And afterwards, to wit, on the 21st day of January, A. D. 1907, the following entries appear of record, viz:

334 Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

On consideration of the motion to require the defendants herein to enter into recognizances for their appearances hereafter,

It is now here ordered by the court that the defendants in this cause enter into their personal recognizances in the penal sum of $1,000 each, conditioned to abide the further orders of the court before the judge of the District Court of the United States for the Eastern District of Tennessee.

JANUARY 21, 1907.

(Endorsed:) Supreme Court of the United States, October term, 1906. No. 12, Orig'l. Order as to recognizances of defdts. Filed June 21, 1907.

335 Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

On consideration of the motion as to the taking of testimony herein,
It is now here ordered by the court that a commissioner will be appointed to take the testimony of witnesses at Chattanooga, in the Eastern District of Tennessee, and counsel on both sides are given ten days in which to agree upon a fit person for such appointment and communicate the nomination to the court.
JANUARY 21, 1907.

(Endorsed:) Supreme Court of the United States. October term, 1906. No. 12. Original. Order to nominate commissioner. Filed Jan. 21, 1907.

336 And afterwards, to wit, on the 25th day of January, A. D. 1907, a suggestion of the Attorney-General on motion to take testimony was filed in the words and figures following, viz:

337 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP AND OTHERS, defendants.

Suggestion of the Attorney-General in reply to brief for certain defendants on motion to take testimony.

338 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP AND OTHERS, defendants.

Suggestion of the Attorney-General in reply to brief for certain defendants on motion to take testimony.

In the brief filed by certain of the defendants reasons are suggested why the testimony should be taken at Chattanooga, and the court's

order directing that it shall be taken before a commissioner appears to designate Chattanooga as the place. The Attorney-General now respectfully requests the court to reconsider this designation and to designate the city of Washington, at least for the purpose of taking the testimony of witnesses for the United States, for the following reasons:

1. The defendants themselves need not attend the hearings in Washington unless, as is unlikely, they wish to be personally present, and their counsel will probably find it no serious hardship to come to Washington.

339 2. If the defendants are, in fact, inconvenienced and suffer some hardship through loss of time or money, or both, these are ordinary and necessary incidents of their situation. They rest under a charge which must be tried. A prima facie case has been made out, in the sense that proofs against them are now to be offered and they are called upon to meet the charge. It may be fairly assumed that it is not wholly without their own fault that they are in this position. Defendants generally must attend the trial court at its usual place of session, either personally or by counsel. The official duties of some among them need not, and should not, change that rule in this case. The entire sheriff's force need not be withdrawn from Hamilton County merely to listen to the testimony for the United States; and it is right and customary, not harsh and arbitrary, to bring witnesses from any part of a district to the court. The court does not go to them. The entire country is the district in the present case, and the court only sits in Washington; the city of Washington, then, is the natural place for the taking of the testimony. This is none the less true because an officer of the court and not the court itself is to take the testimony, and because the defendants have the right to be present, if they are not compelled to be present.

3. It seems to us very important that the testimony should be taken under the eye and direct control of the court, to afford
340 opportunities for immediate reference to the court by, and instructions from the court to, the commissioner in connection with unexpected incidents which may readily occur during the examination of witnesses in a case like this one, wholly without precedent.

4. Finally, it is submitted that the locality where this terrible occurrence took place, and where (as appears from the crime itself, from the record in Johnson's case, and from the oral argument herein on the preliminary questions of law) the feelings of certain portions of the community have been and are still greatly excited, is an unsuitable place for this examination, at least of the witnesses for the United States. In that locality the real facts can not be elicited in a calm and dispassionate atmosphere, free from the danger that local prejudice and a sense of personal insecurity may stifle or check the full and frank utterances of the witnesses for the prosecution; and the Attorney-General deems it his duty to advise the

court that confidential information in the possession of the Department of Justice, of a character entitled to credit, indicates that witnesses for the United States may reasonably, and will in fact, entertain apprehensions of danger to themselves if they testify at Chattanooga.

CHARLES J. BONAPARTE,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

341 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainant, v. John F. Shipp and others, defendants. Suggestion of the Attorney-General in reply to brief for certain defendants on motion to take testimony. Filed Jan. 25, 1907.

342 And afterwards, to wit, on the 28th day of January, A. D. 1907, the following entry appears of record, viz:

343 No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

On motion of Mr. Solicitor-General Hoyt, leave is hereby granted counsel for the defendants to file briefs in opposition to the suggestions of the Attorney-General as to taking testimony in this cause.
JANUARY 28, 1907.

344 And afterwards, to wit, on the 29th day of January, A. D. 1907, a brief for the defendants was filed in the words & figures following, viz:

Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

Brief for defendants opposing motion of the Attorney-General to require witnesses to be examined at Washington, D. C., instead of Chattanooga, Tenn.

GEORGE W. CHAMLEE,
LEWIS SHEPHERD,
Attorneys.

345 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET ALS., DEFENDANTS.

Brief of defendants opposing motion of the Attorney-General to require witnesses to be examined at Washington, D. C., instead of Chattanooga, Tennessee.

The court is familiar with the proceedings of this cause, and this brief is presented in opposition to a motion of the Attorney-General, which motion means, if granted, that all the witnesses for the Government in these cases must be examined at Washington, D. C., instead of at Chattanooga, Tennessee.

The reason why the defendants oppose this motion is that they are all poor men, except the sheriff, and not able to pay the expenses of going from Chattanooga to Washington and there remaining,
346 with their attorneys, during the time that the Government will be taking its proof. It cannot be said that this proof can be heard in their absence, because the charges are serious, and the court has laid down the rule that in contempt cases the defendants are entitled to meet the witnesses face to face. If this hearing is to be had at Washington and the proof taken there, it will practically amount to a denial of justice, because the defendants do not know what the Government's proof will be, nor just which of the defendants are liable to be affected by any witness. It is necessary, therefore, for all of them to be present at this hearing. The defense of the officers and the alleged lynchers is not necessarily the same, and there is no one attorney in the case in a position to represent them all; so that it becomes necessary for most all the attorneys who have been actively engaged in these cases to attend these hearings. We say that there is no reason in the world why the witnesses for the Government should not tell the facts about this case at Chattanooga, Tennessee, just as freely as at any other place. And if after the hearing has commenced at Chattanooga any witness is intimidated, the court has power to change the place of the hearing and also to punish the offending party, if such a case were possible. Public opinion is in a mood now to hear freely, frankly, and unreservedly all the facts of this case at Chattanooga without intimidation towards anybody.

To take these witnesses away from Chattanooga and deprive these defendants of the right to meet them face to face, as must necessarily result, is a great hardship upon them, and particularly so if they are innocent, as they claim to be, and especially on account of their poverty.

Many of these defendants have heretofore filed their affidavits showing that they are unable to pay the expenses of their own witnesses to the city of Washington, and they now appeal to your honors

not to have this hearing at Washington, because it imposes hardships upon them that they cannot bear, and is as to some of them a denial of justice.

347 We most respectfully and earnestly insist that there is no sound reason or foundation for the argument that the witnesses for the Government will testify to facts in Washington, D. C., that they are unwilling to tell at the home of the witnesses and when surrounded by their own families and friends. Besides, the law is sufficient to protect the witnesses, and there ought not to be a precedent established by this court that its commissioner or examiner was unable to get the truth out of witnesses because of the sentiment at the place of the hearing being reported as favorable to the accused when the law presumes the accused innocent of the charges against him.

We most earnestly submit that this honorable court should not make an order in these cases that will prevent the defendants from having the fullest opportunity to show their innocence in this case, and for that reason the motion of the Attorney-General should be overruled.

Respectfully submitted.

GEO. W. CHAMBLEE,
LEWIS SHEPHERD,
Attorneys.

348 And afterwards, to wit, on the 31st day of January, A. D. 1907, a nomination to the court of commissioner to take testimony was filed in the words and figures following, viz:

349 In the Supreme Court of the United States. October term, 1906. No. 12, original.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

Nomination to the court of commissioner to take the testimony.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

350 In the Supreme Court of the United States. October term, 1906.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP AND OTHERS, defendants.
No. 12. Original.

Nomination to the court of commissioner to take the testimony.

The Attorney-General has the honor to report that counsel of record for the defendants unite with him in the nomination to the

court of James D. Maher, esq., of the District of Columbia, to take the testimony of the witnesses in this cause.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

351 (Endorsed:) In the Supreme Court of the United States. October term, 1906. No. 12, Original. The United States of America, complainant, v. John F. Shipp and others, defendants. Nomination to the court of commissioner to take the testimony. Filed January 31, 1907.

352 And on the same day, to-wit, on the 31st day of January, A. D. 1907, the following entry appears of record, viz:

No. 12, Original. The United States of America, complainant, vs. John F. Shipp et al.

Mr. Solicitor-General Hoyt, of counsel for the complainant, submitted to the consideration of the court the nomination of James D. Maher, of the District of Columbia, as the commissioner to take the testimony of the witnesses in this cause. January 31, 1907.

353 And afterwards, to-wit, on the second day of February, A. D. 1907, an answer to the suggestion of the Attorney-General as to taking testimony, with affidavit of V. L. Snodgrass and others, was filed in the words and figures following, viz:

354 Supreme Court of the United States. October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP ET AL.

The answer of Joseph F. Shipp, sheriff of Hamilton County, Tennessee, and his deputies to the suggestion of the Attorney-General that the testimony in this case be taken at Washington, D. C.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendants.

355 Supreme Court of the United States. October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

The answer of Joseph F. Shipp, sheriff, and his deputies, to suggestion of Attorney-General as to taking testimony.

The Attorney-General asks this court to reconsider its order designating Chattanooga as the place of taking testimony in this case,

and requests that the city of Washington be designated, at least for the purpose of taking testimony of witnesses for the United States.

And now come the defendants, Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. V. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, defendants, being the said sheriff and his deputies, and respectfully show to the court that the granting of said request would work great hardship upon them and might result in actual injustice.

These defendants were, at the time of the happening of the matters and things complained of in the information of the Attorney-
356 General, officers of Hamilton County, Tennessee, sworn to uphold the law, and occupying positions which the public welfare required should be filled by persons who respected the law, and who would obey it.

The information not only charges them with failure to uphold the law, but with having become parties to a conspiracy to dethrone the law and substitute in its place mob violence, the antithesis of law.

A conviction of these defendants under the charges of the information involves not only the crime and infamy of perjury, but the guilt of conspiracy to murder.

These defendants have heretofore, prior to the filing of the information in this case, enjoyed the respect and confidence of their fellow-citizens, and it is of the utmost importance to them that their good names be not destroyed unless they are convicted after a full, fair, and impartial trial.

It is not the purpose of the United States to inflict wrong upon any of its citizens, however humble. These defendants verily believe that the granting of the request of the Attorney-General would do them grevious wrong. Every one of these defendants is entitled to be confronted by the witnesses against him. It has been shown by affidavits that many of them are not able to attend the taking of the testimony at Washington. It would be impossible for all of the counsel for all of the defendants to be present all the time, and a false witness might escape proper cross-examination and might leave an impression of truth. The presence of the defendants, when witnesses for the prosecution are being examined, is an important right, one that should not be denied. The defendants are not only entitled to the aid of counsel, but counsel are entitled to the assistance of the defendants.

It is true that these defendants rest under a charge which must be tried, but they submit that they are entitled to a trial which will give them the right to be present, so that they may have the privilege accorded to the meanest criminal of being faced by their accusers. This right will be practically denied should the testimony be taken in Washington.

357 The Attorney-General suggests that it may be fairly assumed that it is not wholly without their own fault that these

defendants are placed in the position which they would be placed were his request granted, but these defendants are unable to reconcile this assumption with the presumption of innocence which the law accords to them.

Answering the further suggestion that Washington is the proper place for the hearing of testimony because the court sits at Washington for the whole United States, these defendants say that the court has already decided that it will not hear oral testimony and has allowed counsel for both parties to nominate a commissioner to take the testimony.

The suggestion contained in paragraph three (3) is equally without merit, because it is impossible to conceive of this tribunal allowing separate hearings on every "unexpected incident which may readily occur during the examination of witnesses," it being the duty of the commissioner to act upon exceptions to testimony, as well as "unexpected incidents."

Finally, these defendants solemnly deny the averments contained in the fourth paragraph of the suggestion of the Attorney-General. They deny that there is any foundation in fact for the serious and unusual charge, confessedly based upon secret information to which neither the defendants nor this honorable court have access, that Chattanooga is, for any reason, an unsuitable place to take the testimony of witnesses. They deny that the real facts cannot be elicited there in "a calm and dispassionate atmosphere." They deny that the testimony would be colored or suppressed by local prejudice or any sense of personal insecurity, or that full and frank utterance of the truth by witnesses for or against these defendants would be "stifled or checked." Whatever may be the character of the "confidential information" to which the Attorney-General refers, these defendants deny that any witness for the United States could reasonably or would, in fact, entertain any apprehension whatever of danger if he testified at Chattanooga.

358 Defendants respectfully submit that the charges contained in said paragraph 4 that the feelings of the community are excited, that the truth would be suppressed from prejudice or from a sense of personal insecurity, or from any other cause, are based upon information of an unreliable character or upon a mistaken conception of the facts.

The "confidential" character of the information referred to by the Attorney-General precludes an investigation of its reliability by these defendants; but in opposition thereto these defendants present herewith the affidavits of D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, Wm. L. Frierson, J. T. Moseley, T. S. Wilcox, G. G. Fletcher, and M. M. Allison, whose positions in the community indicate their character and standing.

Wherefore these defendants and each of them most humbly pray that the request of the Attorney-General be denied.

JOSEPH F. SHIPP.
FRANK JONES.
MATTHEW GALLOWAY.
C. A. BAKER.
T. B. TAYLOR.
FRED FRAWLEY.
GEORGE BROWN.
JEREMIAH GIBSON.
MARION PERKINS.
JOSEPH CLARK.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendants.

359 STATE OF TENNESSEE, *Hamilton County:*

Before me, the undersigned authority, this day personally appeared Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, the defendants above named, who being first duly sworn, deposed and say, that all and singular, the statements made in the foregoing answer are true to the best of their knowledge, information, and belief.

JOSEPH F. SHIPP.
FRANK JONES.
M. L. GALLOWAY.
CHAS. A. BAKER.
THOS. B. TAYLOR.
GEO. W. BROWN.
M. PERKINS.
F. T. FRAWLEY.
JOSEPH CLARK.
JERRY GIBSON.

Sworn to before me and subscribed in my presence this 29th day of January, A. D. 1907.

C. L. HAYES, [SEAL.]
Notary Public.

STATE OF TENNESSEE, *Hamilton County:*

Before me, the undersigned, a notary public in and for the county and State aforesaid, this day personally came D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, W. L. Frierson, John T. Moseley, T. S.

Wilcox, G. G. Fletcher, and M. M. Allison, who, after being duly sworn, severally deposed and said:

That they and each of them are citizens and residents of Hamilton County, Tennessee;

And the said D. L. Snodgrass deposes and says that he has
360 resided in Chattanooga, Tennessee, for 24 years; that he is the clerk of the Circuit Court of the United States for the Eastern District of Tennessee; that he has held several political and judicial offices, having been for 16 years one of the judges of the Supreme Court of the State and for more than 8 years its chief justice;

And the said J. W. Bachman deposes and says that he has resided in Chattanooga, Tennessee, for more than 30 years, during all of which time he has been the pastor of the First Presbyterian Church of Chattanooga;

And the said C. A. Lyerly deposes and says that he has resided in Chattanooga, Tennessee, for more than 20 years, and has been connected with several financial and business establishments, being for 18 years the president of the Chattanooga National Bank, and that he is now the president of the First National Bank of Chattanooga;

The said W. L. Frierson deposes and says that he has resided in Chattanooga, Tennessee, for more than 16 years, where he has practiced law, and that he is now the mayor of the city of Chattanooga;

The said J. T. Moseley deposes and says that he has resided in Chattanooga, Tennessee, for more than 16 years, and that he is now the chief of police of said city;

The said T. S. Wilcox deposes and says that he has resided in Chattanooga, Tennessee, for more than 35 years, and that he is now president of the board of public safety of said city;

And the said G. G. Fletcher deposes and says that he has resided in Chattanooga, Tennessee, for 22 years, and that he is now the president of the chamber of commerce of said city;

The said M. M. Allison deposes and says that he has resided in Chattanooga, Tennessee, for more than 4 years, and that he is now, and for the past 4½ years has been, the judge of the Circuit Court of Hamilton County, Tennessee;

And the said D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, W. L. Frierson, J. T. Moseley, T. S. Wilcox, G. G. Fletcher, and M. M. Allison, each severally deposes and says that he is acquainted
361 with the people of Chattanooga, and the conditions and sentiments of the community; that he does not believe that any excitement, local prejudice, or other conditions exist at Chattanooga which would in any way tend to make it an improper place for taking the testimony of the witnesses in the case of The United States against J. F. Shipp and others; that he knows of no excitement in the community over this case, or over the Johnson case, which would tend to prevent a full and fair expression of truth by any witness that might be examined for the prosecution or the defense; that there is no danger and no reason to apprehend danger to any witness who may

testify at Chattanooga, whatever may be his testimony; and no facts exist which would tend to produce any apprehension of danger on the part of any witness that may be called to testify there.

D. L. SNODGRASS.
J. W. BACHMAN.
C. A. LYERLY.
WM. L. FRIERSON.
J. T. MOSELEY, *C. P.*
T. S. WILCOX.
G. G. FLETCHER.
M. M. ALLISON.

Sworn to and subscribed before me this 30th day of January, 1907.

[SEAL.] T. T. RANKIN,
Notary Public.

362 (Endorsed:) Supreme Court of the United States. October term, 1906. No. 12. Original. The United States of America, complainant, vs. John F. Shipp et al. The answer of Joseph F. Shipp, sheriff of Hamilton County, Tennessee, and his deputies to the suggestion of the Attorney-General that the testimony in this case be taken at Washington, D. C., and affidavit of D. L. Snodgrass et al. Filed Feb. 2, 1907.

363 And afterwards, to-wit, on the 4th day of February, A. D. 1907, the following entry appears of record, viz:

364 Supreme Court of the United States. October term, 1906.
No. 12. Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.

This cause coming on to be heard in respect of the appointment of a special commissioner to take testimony herein, and the parties, duly appearing by their counsel, having agreed upon a fit person for such appointment and communicated their nomination to the court:

It is ordered that Mr. James D. Maher, a resident of the District of Columbia, be, and he is hereby, appointed a commission to take and return the testimony in this proceeding, with the powers of a master in chancery, as provided in the rules of this court; but said commissioner shall not make any findings of fact or state any conclusions of law.

It is further ordered that the taking of the testimony shall be commenced at the city of Chattanooga, in the Eastern District of Tennessee, as soon as possible, at such place as the commissioner shall designate, reasonable notice thereof to be given counsel on both sides, and be proceeded in with all convenient speed; and the commissioner

is hereby authorized also to take testimony elsewhere if that shall be agreed on by counsel or appear to be necessary, with leave to him or to either of the parties to apply to the court for such orders in that regard as they may be advised.

Said commissioner shall promptly report to the court the testimony taken by him, without findings of fact or conclusion of law, and shall receive such compensation as may hereafter be determined, and his actual expenses, an itemized statement of which shall accompany his report.

FEBRUARY 4, 1907.

365 (Endorsed:) Supreme Court of the United States. October term, 1906. No. 12, original. Order appointing commissioner to take testimony. Filed February 4, 1907.

366 And afterwards, to-wit: On the 6th day of February, A. D. 1907, the oath of James D. Maher as commissioner herein was filed in the words and figures following, viz:

367 I, James D. Maher, commissioner appointed by the Supreme Court of the United States to take and return the testimony in the cause of the United States of America, complainant, vs. John F. Shipp et al. (No. 12, original, October term, 1906), do solemnly swear that I will faithfully and impartially discharge and perform all the duties devolved on me as such commissioner, according to the best of my ability and understanding. So help me God.

JAMES D. MAHER.

Subscribed and sworn to before me this 5th day of February, 1906.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

(Endorsed:) Supreme Court U. S. October term, 1906. No. 12, original. The United States, complainant, vs. John F. Shipp et al. Oath of James D. Maher, commissioner. Filed February 6", 1907.

368 And afterwards, to-wit: On the 14th day of October, A. D. 1907, a motion that reports of commissioner be filed was filed in the words and figures following, viz:

369 In the Supreme Court of the United States.

October term, 1907. No. 5. Original.

UNITED STATES
v.
JOHN F. SHIPP ET AL.

The United States moves the court to file the reports of James D. Maher, esquire, special commissioner herein, as to the taking of testimony and as to his expenses.

EDWARD T. SANFORD,
Asst. Attorney-General.

(Endorsed:) Supreme Court U. S. October term, 1907. No. 5, original. The United States of America, complainant, vs. J. F. Shipp et al. Motion that reports of commissioner be filed. Filed Oct. 14th, 1907.

370 And on the same day, to wit, on the 14th day of October, A. D. 1907, the following entry appears of record, viz:

No. 5. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
J. F. SHIPP ET AL.

On motion of Mr. Assistant Attorney-General Sanford, of counsel for the complainant, it is ordered that the testimony taken herein be opened, published, and filed.

OCTOBER 14, 1907.

371 And on the same day, to wit, on the 14th day of October, A. D. 1907, the following entry appears of record, viz:

No. 5. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
J. F. SHIPP ET AL.

On motion of Mr. Assistant Attorney-General Sanford, of counsel for the complainant, leave is hereby granted to file the reports of the commissioner as to the taking of testimony and as to his expenses in connection therewith, and also stipulations of counsel as to facts, as to the taking of the testimony, and as to the misnomer of certain defendants.

OCTOBER 14, 1907.

372 And on the same day, to-wit, the 14th day of October, A. D. 1907, a motion for leave to file stipulations as to misnomer of certain defendants, as to taking of testimony, and as to certain agreed facts was filed in the words and figures following, viz:

373 In the Supreme Court of the United States.

October term, 1907. No. 5. Original.

UNITED STATES
v.
JOHN F. SHIPP ET AL.

The United States moves the court for leave to file stipulations of counsel in this case relating to the misnomer of certain defendants, the taking of testimony, and certain facts agreed.

EDWARD T. SANFORD,
Assistant Attorney-General.

(Endorsed:) Supreme Court U. S. October term, 1907. No. 5. Original. The United States of America, complainant, vs. J. F. Shipp et al. Motion for leave to file stipulations of counsel as to misnomer of certain defendants, the taking of testimony, and as to certain agreed facts.

Filed Oct. 14th, 1907.

374 And on the same day, to wit: The 14th day of October, A. D. 1907, the reports of the commissioner as to taking testimony and as to expenses were filed in the words and figures following, viz:

375 Supreme Court of the United States.

October term, 1907. No. 5. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
J. F. SHIPP ET AL.

To the honorable the Supreme Court of the United States:

The undersigned commissioner appointed by an order entered in this cause on the 4th day of February, 1907, to take and return such evidence as the parties to said cause should produce, respectfully reports to the court that pursuant to the said order he opened the commission conferred on him in the United States court room in the city of Chattanooga, State of Tennessee, on Tuesday, February 12, 1907, at 10 o'clock a. m., and, the counsel for the respective parties being present, proceeded to execute the said commission on that day and on the 13th, 14th, and 15th days of the same month, when, on the suggestion of the counsel for the complainant, an adjournment was taken. Pursuant to notice given by the undersigned to counsel for the respective parties, the taking of testimony in the cause was resumed at the same place on Monday, June 10, 1907, and continued on the 11th, 12th, 13th, 14th, 15th, 17th, 18th, 19th, 20th, 21st, 24th, 25th, 26th, 27th, 28th, and 29th days of the same month, on which last-named day, the parties not offering any more testimony, the commission was closed.

The said commission was executed by receiving the testimony of the several witnesses named in the testimony, who were sworn to testify to the truth, the whole truth, and nothing but the truth before giving their evidence, and the testimony so given by them was taken down by a stenographer in the presence of the undersigned, and is herewith submitted, together with the exhibits offered in evidence.

376 Said testimony and exhibits, contained in 20 typewritten volumes containing 2,283 pages, have been deposited with the clerk of this honorable court.

Respectfully submitted.

JAMES D. MAHER,
Commissioner.

(Endorsed:) Supreme Court U. S. October term, 1907. No. 5. Original. The United States of America, compl't, vs. J. F. Shipp et al. Report of commissioner as to taking of testimony. Filed Oct. 14th, 1907.

377 Supreme Court of the United States.

October Term, 1907. No. 5. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
J. F. SHIPP ET AL.

To the Honorable the Supreme Court of the United States:

Pursuant to the order of this honorable court entered on the 4th day of February, 1907, appointed the undersigned as commissioner to take and return the testimony in the above-entitled cause and directing a statement of actual expenses incurred in the taking of said testimony to be submitted, I beg leave to state that it became necessary to travel to the city of Chattanooga, Tennessee, on two separate occasions—in February and June, 1907—and the expenses of the commissioners were as follows:

In February:		
Railroad fares	$48.15	
Cabs and baggage	1.60	
Room at hotel	15.00	
Meals	16.15	
Telegrams	1.46	
	$82.36	$82.36
378 In June:		
Railroad fares	$43.00	
Cabs and baggage	2.50	
Hotel bill	83.75	
Meals on trains and at club	5.75	
Telegrams	1.69	
	$136.69	$136.69
Making a total of		$219.05

Respectfully submitted.

JAMES D. MAHER,
Commissioner.

(Endorsed:) Supreme Court U. S. October term, 1907. No. 5. Original. The United States of America, compl't, vs. J. F. Shipp et al. Report of commissioner as to expenses incurred by him in taking testimony. Filed Oct. 14th, 1907.

379 And on the same day, to wit, the 14th day of October, A. D. 1907, stipulati'ns were filed in the words and figures following, viz:

380 In the Supreme Court of the United States. October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
v.
J. F. SHIPP ET AL., DEFENDANTS.

In this cause it is stipulated and agreed that the true name of the defendant styled in the information John F. Shipp is Joseph F. Shipp; that of the defendant styled William May is William Mayse; that of the defendant styled Alfred Hammond is Alfred Handman; that of the defendant styled "Sheenie" Warner is Paul Werner; that of the defendant styled A. J. Cartwright is S. J. Cartwright; that of the defendant styled R. F. Cartwright is R. J. Cartwright; that of the defendant styled William Beeler is James William Beeler; and that the defendants have answered in their true names and make no question as to the misnomer in the complaint, but agree that these proceedings may be conducted with the same force and effect as if they had been correctly styled in the information by their true names respectively.

Witness the hands of said parties, by their counsel, this day of February, 1907.

THE UNITED STATES OF AMERICA,
By EDWARD T. SANFORD,
Assistant Attorney General.
JOSEPH F. SHIPP,
By ROBT. PRITCHARD, *his Attorney.*
WILLIAM MAYES,
By T. POPE SHEPHERD, *Atty.*
ALFRED HANDMAN,
By T. POPE SHEPHERD, *Atty.*
J. W. BEELER, per CHAS. R. HEAD.
JOHN H. EARLY, for CARTWRIGHTS.
PAUL WERNER,
By G. W. CHAMLEE, *Atty.*

(Endorsed:) Supreme Court U. S. October term, 1907. No. 5. Original. The United States of America, complainant, vs. J. F. Shipp et al. Stipulation of counsel as to misnomer of certain defendants. Filed Oct. 14th, 1907.

381 In the Supreme Court of the United States.

October term, 1906. No. 12. Original.

THE UNITED STATES OF AMERICA, complainant,
vs.
J. F. SHIPP ET AL., DEFENDANTS.

In this cause it is stipulated and agreed that after the testimony is reduced to typewriting it shall be submitted to counsel for the several parties and promptly examined, and unless counsel find material errors in the same the testimony may be signed by the commissioner, with the same force and effect as if signed by each witness. In the event material errors are found, they shall be called to the attention of the commissioner and the usual course shall be taken in reference thereto.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attys. for Sheriff and His Deputies; all by Robert Pritchard, Atty.
LEWIS SHEPHERD.
T. POPE SHEPHERD.
MARTIN A. FLEMING.
CHAS. R. HEAD.
E. G. DANIELS.
J. V. WILLIAMS.
JOHN H. EARLY.
G. W. CHAMLEE.
T. W. STANFIELD.
EDWARD T. SANFORD,
Asst. Atty. General.
JOSEPH CLARK,
By SPEERS & LYNCH, *Attys.*

(Endorsed:) Supreme Court U. S. October term, 1907. No. 5. Original. The United States, complainant, vs. J. F. Shipp et al. Stipulation of counsel as to testimony. Filed Oct. 14th, 1907.

382 In the Supreme Court of the United States.

October term, 1906.

THE UNITED STATES OF AMERICA, complainant,
v.
J. F. SHIPP ET AL., DEFENDANTS.

In this cause, to save the time and expense of taking proof as to the matters hereinafter referred to, it is stipulated and agreed as follows:

That on the 11th day of February, 1906, one Ed Johnson, a citizen of the United States and a resident and citizen of the State of Ten-

nessee, and a colored person of African descent, was convicted of the crime of rape in the criminal court of Hamilton County, held at the city of Chattanooga in the State of Tennessee, and said court thereupon sentenced the said Ed Johnson to suffer the penalty of death.

That on the 3d day of March, 1906, and before the date set for the execution of the said Ed Johnson, a petition for a writ of habeas corpus, signed by the said Ed Johnson, as petitioner, was duly presented to the United States Circuit Court for the Northern Division of the Eastern District of Tennessee, in which it was alleged, among other things, that upon the trial of the said Ed Johnson in the criminal court of Hamilton County in the State of Tennessee for the crime of rape, for which he had been convicted, said petitioner had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel, in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution; that thereafter, to wit, on the 10th day of March, 1906, the application of the said Ed Johnson for a writ of habeas corpus came on for hearing before the said United States Court for the Eastern District of Tennessee upon the petition, return,
383 answer, and replication, and upon the testimony of witnesses given orally in open court, and after argument of counsel, the said Circuit Court ordered that said petition be dismissed, and that the writ of habeas corpus prayed for in said petition be denied, and further ordered that said petitioner be remanded to the custody of the sheriff of said Hamilton County in the State of Tennessee, to be detained by said sheriff in his custody for the period of ten days in which to enable said petitioner to prosecute an appeal from said order, should he be so advised and should an appeal lie from said order, and in default of the prosecution of an appeal within said time to be then further proceeded with by the court of the State of Tennessee under its sentence.

That thereafter on the 17th day of March, 1906, an application was duly presented by the said Ed Johnson to the Hon. John M. Harlan, an associate justice of the Supreme Court of the United States, assigned to the sixth circuit, asking that an appeal be allowed to the Supreme Court of the United States from the judgment rendered in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee on March 10, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, as aforesaid, which said appeal was on the same day allowed by Mr. Justice Harlan.

That on the 19th day of March, 1906, a motion was duly made in the Supreme Court of the United States by counsel for and representing the said Ed. Johnson for an order allowing an appeal to the

Supreme Court of the United States from the judgment of the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, rendered on the 10th day of March, 1906, denying his, the said Ed. Johnson's, application for a writ of habeas corpus, which motion was thereupon granted by the Supreme Court of the United States and an order duly made and entered by the Chief Justice in the words and figures following, to wit:

ED. JOHNSON, APPELLANT,
v.
THE STATE OF TENNESSEE.

On motion of Mr. E. M. Hewlett, of counsel for the ap-
384 pellant, it is ordered by the court that an appeal from the Circuit Court of the United States for the Eastern District of Tennessee be, and the same is hereby, allowed, and that all proceedings against the appellant be stayed, and the custody of the said appellant be retained pending this appeal.

Per Mr. Chief Justice Fuller.

That there was also published and circulated in said city of Chattanooga in the evening paper on the said 19th day of March, 1906, before 6 o'clock p. m., an account of the action of the Supreme Court of the United States in allowing an appeal and granting a stay of further roceedings on the part of the state courts against the said Ed. Johnson until the determination of said appeal before the Supreme Court of the United States.

That during all the times herein mentioned, and on and subsequent to March 19th, 1906, the above-named defendant, J. F. Shipp, was the duly elected, qualified, and acting sheriff of Hamilton county, in the State of Tennessee, and as such sheriff had and exercised full charge and control of the county jail, located in the city of Chattanooga, in said county, and was the legal custodian under the laws of Tennessee of all persons duly committed in said county under the laws of said State to confinement and imprisonment within said jail; and that the defendants, Frank Jones, Matthew Galloway, C. A. Baker, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, and each of them, were, during all the times herein mentioned, and on and subsequent to March 19, 1906, the duly appointed, qualified, and acting deputy sheriffs of said county and State under the said J. F. Shipp.

It is further agreed that this stipulation may be offered before the commissioner by either the complainant or the defendants as evidence of any or all of the matters herein above stipulated: Provided, however, that no admission is made as to the competency or relevancy of any of the facts above stipulated, this stipulation being merely intended as proof of the facts above stipulated with the same force and

effect as if duly proven by the testimony of witnesses and to
385 be subject in all respects to the same exceptions as the testimony of witnesses would be; all parties expressly reserving the right to except to any portion of this stipulation when introduced in evidence upon any ground relating to the competency, relevancy, or admissibility of the subject matter to which this stipulation relates.

THE UNITED STATES OF AMERICA,
By EDWARD SANFORD,
Assistant Attorney-General.
By JAMES R. PENLAND,
United States Attorney.
By C. S. DANIELS,
Atty. for Marquette.
By T. B TAYLOR,
By T. W. Stanfield, Atty.
By JOHN H. EARLY,
Atty. for Cartwrights.
By LEWIS SHEPHERD, *Atty.*
T. POPE SHEPHERD, *Atty.*
M. A. FLEMING, *Atty.*
CHAS. R. HEAD.
G. W. CHAMLEE,
For Ward, Williams & Warner.
JOSEPH CLARK,
By Speers & Lynch, Attys.

JOSEPH F. SHIPP,
FRANK JONES,
C. A. BAKER,
FRED T. FRAWLEY,
GEO. W. BROWN,
JERE GIBSON,
MARION PERKINS,
JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
All by Robert Pritchard, Atty.
Attys. for Sheriff and Deputies.

386 (Endorsed:) Supreme Court U. S. October term, 1907. No. 5, original. The United States of America, complainant, vs. J. F. Shipp et al. Stipulation of counsel as to facts. Filed Oct. 14th, 1907.

387 And on the same day to wit, the 14th day of October, A. D. 1907, the testimony and exhibits were filed in the words and figures following, viz:

1 In the Supreme Court of the United States. October term, 1906.

THE UNITED STATES OF AMERICA, Complainant, *vs.* JOHN F. SHIPP ET AL. | No. 12. Original.

Testimony before James D. Maher, esq., Commissioner.

CHATTANOOGA, TENNESSEE, *February 12th, 1907.*

The hearing for the taking of testimony in the above entitled cause was begun before James D. Maher, esq., Commissioner, at the United States District Court Room, Chattanooga, at 10 o'clock a. m.

The COMMISSIONER. Pursuant to an order of the Supreme Court of the United States, entered in the case of the United States against John F. Shipp and others, I am here as the commissioner ap-
2 pointed by the court on the 4th instant, to take testimony in the case.

I suppose the usual procedure will be followed, for the complainant to offer its witnesses, to be followed by the testimony of the defendants.

Mr. SANFORD. Mr. Commissioner, representing the United States, I would ask that this matter be continued until two o'clock. I think that proposition meets the approval of counsel for the defendants. There are some formal matters which we may stipulate about, and avoid the necessity of taking proof, and in that way, I think, we can expedite matters.

The COMMISSIONER. If there is no objection that may be done.

Mr. COOKE. There is no objection on our part.

The COMMISSIONER. Then we will take a recess until two o'clock this afternoon.

A recess was thereupon taken until two o'clock p. m.

AFTER RECESS.

The hearing was resumed at two o'clock p. m.

Mr. SANFORD. Mr. Commissioner, I should like to ascertain whether all of the defendants are here in person or represented by counsel. There has never been any service of process upon Paul Pool, as I understand. Are all the other defendants here in person or by counsel?

Mr. HARMON. Suppose we have the record show who is here.

Mr. SANFORD. It might be well to do so.

The COMMISSIONER. I will call the names of the defendants, and the gentlemen who represent those defendants will enter their appearance formally by announcing they are counsel for the respective defendants.

3 The commissioner called the names of the respective parties, and the following appearances were entered:

Hon. Edward T. Sanford, Assistant Attorney-General, and Hon. James R. Penland, United States Attorney, on behalf of the United States.

Hon. Judson Harmon, Robert Pritchard, esq., M. H. Clift, esq., R. B. Cooke, esq., and J. J. Lynch, esq., on behalf of the defendant Sheriff John F. Shipp, and his deputies, as a class.

J. J. Lynch, esq., on behalf of the defendant Joseph Clark;

T. W. Stanfield, esq., on behalf of the defendants T. B. Taylor and George Brown.

Lewis Shepherd, esq., Martin Fleming, esq., and T. P. Shepherd, esq., on behalf of the defendants "Nick" Nolan and "Sheenie" Warner;

G. W. Chamlee, esq., on behalf of the defendant, Luther Williams;

J. V. Williams, esq., on behalf of the defendant William Marquette;

C. R. Head, esq., on behalf of the defendant, William Beeler;

Lewis Shepherd, esq., Martin Fleming, esq., and T. P. Shepherd, esq., on behalf of the defendants Claude Powell, Charles J. Powell, "Bart" Justice and John Jones;

J. H. Early and Samuel P. Maddox, esq., on behalf of the defendants A. J. Cartwright and R. F. Cartwright;

Lewis Shepherd, esq., Martin Fleming, esq., and T. P. Shepherd, esq., on behalf of the defendants Henry Padgett and William
4 May; John A. Hood, esq., on behalf of the defendant Frank Ward; Lewis Shepherd, esq., Martin Fleming, esq., and T. P. Shepherd, esq., on behalf of the defendants John Varnell and Alfred Hammond.

Mr. HOOD. I desire to state to the commissioner that Mr. Ward is now living at Nashville. He was in Chattanooga the other day in order to make his bond. He is not now present, but I will have him here later.

The COMMISSIONER. Something may turn up during the course of the week in relation to that matter.

Mr. SANFORD. I understand it was suggested yesterday that an agreement should be made in reference to the signing of the testimony, so as to avoid delay, to this effect: After the testimony shall have been written up, copies shall be sent to both the counsel for the Government and the counsel for the defendants, and if there is no objection to the evidence as taken down, it may be signed by the commissioner, without the necessity of having it signed by the witnesses. Counsel for the defendants suggested that yesterday. Is that still agreeable?

It was announced by several of the attorneys for the defendants that the course referred to would be satisfactory to them.

Mr. SANFORD. Then there is a stipulation which has been agreed upon as to a large number of facts, which stipulation, however, has

not yet been written out in proper form. This will be done later.

It is also proper at this stage of the proceedings, I take it, to say that several of the defendants are styled in this information by improper names. For instance, Mr. Shipp is styled "John F. Shipp", whereas it should be, "Joseph F. Shipp"; but it is agreed that no question is made as to any of the misnomers, and the defendants are to be tried by their proper names.

The COMMISSIONER. Counsel may execute the stipulation, and it will be embodied in the record.

Mr. SANFORD. We will draw up the proper stipulation.

The COMMISSIONER. Let it be signed by all of the counsel, and it may be embodied in the record.

Mr. PRITCHARD. I desire to say, if the commissioner please, that this preliminary matter may be formulated and put in better form by simply showing in the caption who are here representing different parties.

The COMMISSIONER. Yes; that will be done afterwards.

Mr. PRITCHARD. As I take it, this is a mere memorandum now.

The COMMISSIONER. That is all.

Mr. PRITCHARD. An entry as to that misnomer should be made to show their proper names on the face of the record, and we waive any objection to that misnomer.

Mr. SANFORD. We can make a stipulation to that effect and let it be filed.

The COMMISSIONER. It should be included in the stipulation of counsel.

Mr. SANFORD. Mr. Head suggests that he has not seen this stipulation. I thought it had been shown to all of the counsel for the defendants. It may be proper to read the stipulation, and if there is any objection to it, the Government would like to know it now.

Mr. HARMON. That will be the quickest way.

Mr. HEAD. I expect it had better be read, and if there is any objection, let it be known now.

Mr. SANFORD. There are some corrections that have only been made orally, and I will read the stipulation in the corrected form. It as follows:

In the Supreme Court of the United States, October term, 1906.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
J. F. SHIPP ET AL., DEFENDANTS.
No. 12. Original.

In this cause, to save the time and expense of taking proof as to the matters hereinafter referred to, it is stipulated and agreed as follows:

That on the 11th day of February, 1906, one Ed Johnson, a citizen of the United States and a resident and citizen of the State of Ten-

nessee, and a colored person of African descent, was convicted of the crime of rape in the criminal court of Hamilton County, held at the city of Chattanooga, in the State of Tennessee, and said court thereupon sentenced the said Ed Johnson to suffer the penalty of death.

That on the 3rd day of March, 1906, and before the date set for the execution of the said Ed Johnson, a petition for a writ of habeas corpus, signed by the said Ed. Johnson as petitioner, was duly presented to the United States Circuit Court for the Northern Division of the Eastern District of Tennessee in which it was alleged, among other things, that upon the trial of the said Ed. Johnson in the criminal court of Hamilton County, in the State of Tennessee, for the
7 crime of rape, for which he had been convicted, said petitioner had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution; that thereafter, to wit, on the 10th day of March, 1906, the application of the said Ed. Johnson for a writ of habeas corpus came on for hearing before the said United States Court for the Eastern District of Tennessee upon the petition, return, answer, and replication, and upon the testimony of witesses given orally in open court, and after argument of counsel the said Circuit Court ordered that said petition be dismissed and that the writ of habeas corpus prayed for in said petition be denied, and further ordered that said petitioner be remanded to the custody of the sheriff of said Hamilton County, in the State of Tennessee, to be detained by said sheriff in his custody for the period of ten days in which to enable said petitioner to prosecute an appeal from said order should he be so advised and should an appeal lie from said order, and in default of the prosecution of an appeal within said time to be then further proceeded with by the court of the State of Tennessee under its sentence.

That thereafter, on the 17th day of March, 1906, an application was duly presented by the said Ed Johnson to the Hon. John M. Harlan, an associate justice of the Supreme Court of the United States, assigned to the sixth circuit, asking that an appeal be allowed to the Supreme Court of the United States from the judgment rendered in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee on March 10, 1906, deny-
8 ing his, the said Ed Johnson's, application for a writ of habeas corpus, as aforesaid, which said appeal was on the same day allowed by Mr. Justice Harlan.

That on the 19th day of March, 1906, a motion was duly made in the Supreme Court of the United States by counsel for and representing the said Ed Johnson for an order allowing an appeal to the Supreme Court of the United States from the judgment of the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee, rendered on the 10th day of March,

1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, which motion was thereupon granted by the Supreme Court of the United States and an order duly made and entered by the Chief Justice in the words and figures following, to wit:

ED JOHNSON, APPELLANT.
vs.
THE STATE OF TENNESSEE.

On motion of Mr. E. M. Hewlett, of counsel for the appellant, it is ordered by the court that an appeal from the Circuit Court of the United States for the Eastern District of Tennessee be, and the same is hereby, allowed, and that all proceedings against the appellant be stayed, and the custody of the said appellant be restrained pending this appeal.

Per Mr. Chief Justice FULLER.

That there was also published and circulated in said city of Chattanooga in the evening paper on the said 19th day of March, 1906, before six o'clock p. m., an account of the action of the Supreme Court of the United States in allowing an appeal and granting a stay of further proceedings on the part of the state courts against the
9 said Ed. Johnson until the determination of said appeal before the Supreme Court of the United States.

That during all the times herein mentioned, and on and subsequent to March 19th, 1906, the above-named defendant, J. F. Shipp, was the duly elected, qualified, and acting sheriff of Hamilton County, in the State of Tennessee, and as such sheriff had and exercised full charge and control of the county jail, located in the city of Chattanooga, in said county, and was the legal custodian under the laws of Tennessee of all persons duly committed in said county under the laws of said State to confinement and imprisonment within said jail; and that the defendants, Frank Jones, Matthew Galloway, C. A. Baker, Fred. Frauley, George Brown, Jeremiah Gibson, Marion Perkins, and each of them, were, during all the times herein mentioned, and on and subsequent to March 19th, 1906, the duly appointed, qualified, and acting deputy sheriffs of said county and State under the said J. F. Shipp.

It is further agreed that this stipulation may be offered before the commissioner by either the complainant or defendant as evidence of any part or all of the matters hereinbefore stipulated. Provided, however, that no admission is made as to the competency or relevancy of any of the facts above stated, this stipulation being merely intended as proof of the facts above stipulated with the same force and effect as if duly proven by the testimony of witnesses and to be subject in all respects to the same exceptions as the testimony of witnesses would be; all parties expressly reserving the right to except to any portion of this stipulation when introduced in evidence
10 upon any ground relating to the competency, relevancy, or

admissibility of the subject matter to which this stipulation relates.

THE UNITED STATES OF AMERICA.

By

Assistant Attorney-General.

By

United States Attorney.

By

By

By

By

By

By

By

By

By

11 Mr. SANFORD. I thought that had been submitted to all of the counsel. It was so intended. That, I understand, is agreed to by all of the counsel and we will have it drawn up in proper form.

In regard to the matter of the telegram sent by the clerk of the Supreme Court of the United States, it is agreed by counsel to whom the matter has been mentioned that the commissioner's personal statement may be taken as evidence in the matter of when that telegram was sent and its contents. I have a copy of the telegram, which was furnished me. Is that agreeable to you, gentlemen?

Mr. SHEPHERD. It is, so far as I am concerned.

The COMMISSIONER. This telegram was sent by myself, for the clerk, on the day it is dated, March 19th, in the neighborhood of one o'clock in the afternoon. I delivered it personally at the telegraph office in the corridor of the House of Representatives in the Capitol at Washington, and pre-paid it; and this copy was made under my direction before I left Washington.

Mr. JUDSON. Just let the copy be put in the record. That will save time.

The COMMISSIONER. Is there any further question you wish to ask me in relation to it?

Mr. SANFORD. That is all.

The copy of the telegram referred to is in words and figures following, to wit:

"WASHINGTON, *March 19th, 1906.*

"*To Sheriff of Hamilton County, Tennessee, Chattanooga, Tenn.:*

"Supreme Court of United States has allowed Ed Johnson appeal from Judge Clark's order, and directed all further proceedings
12 stayed and custody of Johnson retained pending appeal here. See section Seven hundred and sixty-six of Revised Statutes of United States.

"JAMES H. MCKENNEY,
"*Clerk, Supreme Court, U. S.*"

Mr. SANFORD. I would like to call Mr. Brazelton.

Mr. PRITCHARD. In this case, if the commissioner please, we desire to ask the enforcement of the rule that all witnesses except the witness on the stand be excluded during the taking of the testimony.

The COMMISSIONER. I think that is a very proper suggestion. All the witnesses in this case who have been subpœnaed will please retire from the room except the gentleman who has been sworn. The marshal will please execute the order.

ALFRED W. BRAZELTON, a witness produced on behalf of the Government, and after being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. What is your full name, Mr. Brazelton?

A. Alfred Williams Brazelton.

Q. Where do you live?

A. At Birmingham, Alabama.

Q. In what business are you engaged?

A. I am stenographer for the firm of Tillman, Grubb, Bradley and Morrow.

Q. Were you ever employed in any official capacity by Judge
13 Clark?

A. Yes, sir; as private secretary for nearly seven years.

Q. Were you his private secretary in March, 1906?

A. Yes, sir.

Q. When you were his private secretary, did you have anything to do with any telegrams from Judge Harlan to Judge Clark in reference to the appeal in the Ed. Johnson case?

A. Yes, sir.

Q. Have you those telegrams with you?

A. Yes, sir.

Q. Let me have them, please.

(The witness produces certain papers.)

Q. Please look at that document [handing witness a paper] and just state what it is without reading it first.

A. That is a telegram that was sent to Judge Clark at Knoxville, and forwarded from Knoxville on here.

Q. When was that telegram received?

A. That was received, I think, in the afternoon of that day.

Mr. SANFORD. I desire to offer that telegram in evidence.

Mr. PRITCHARD. Let me see it, please.

(The telegram was handed to Mr. Pritchard.)

Mr. SANFORD. I might say, gentlemen, that I propose to ask the preliminary question whether that was communicated to Mr. Shipp. I propose to connect him with it.

Mr. PRITCHARD. We understand.

By Mr. SANFORD:

Q. Will you read that telegram, so that the stenographer may get it down? Read it distinctly, and read the date.

14 A. It is dated Washington, D. C., March 18th. To Hon. C. D. Clark, United States Circuit Court, Chattanooga, Tenn.

By Mr. PRITCHARD:

Q. What is the date, Mr. Brazelton?

A. March 18th.

Q. 18th, not 16th?

A. I said March 18th.

Q. I understood you to say 16th. I beg your pardon.

A. (Reading):

"Have allowed appeal to accused in habeas corpus case of Ed. Johnson. Transcript will be filed to-morrow, and motion also made by Johnson counsel for formal allowance of appeal of court.

"JOHN M. HARLAN,
"*Associate Justice.*"

By Mr. SANFORD:

Q. That was in 1906, was it?

A. Yes, sir.

Q. Did you communicate that to Sheriff Shipp?

A. Yes, sir; at Judge Clark's request.

Q. How did you communicate it, and when?

A. It was in the afternoon. I had just returned from lunch and found a notice under the door that there was a telegram for the Judge, and I went and got it and brought it up and showed it to the Judge. He told me to telephone the contents the message to Captain Shipp. I called him at the jail and they told me he was at his home. I reached him at his residence and read it to him over the phone.

Q. How did you recognize him?

15 A. Of course I could not, sir, swear it was Captain Shipp, but he said it was him.

Q. Are you acquainted with him?

A. Yes, sir.

Q. Have you been acquainted with him?

A. Yes, sir.
Q. Did you recognize him by his voice?
A. Yes, sir; I think it was him.
Q. Did Judge Clark receive a later telegram, the next day, from Mr. Justice Harlan?
A. Yes, sir.
Q. Was that the telegram which I now hand you?
A. Yes, sir.
Mr. SANFORD. I will submit it to opposite counsel.

By Mr. SANFORD:

Q. (After the telegram was examined by counsel.) Just read that telegram. We desire to offer these two telegrams in evidence.
A. (Reading:)

WASHINGTON, D. C., *Mch. 19th, 1906.*

Hon. C. D. CLARK, U. S. Court,
Chattanooga, Tenn.

Court has just allowed appeal in Johnson's case and ordered all further proceedings against him delayed and custody retained pending appeal here. It will be well to call attention of state officers immediately to section seven hundred and sixty-six of Revised Statutes.

JOHN M. HARLAN.

Q. Is the hour at which that was sent stated?
A. It is dated 12.25 p. m.
Q. When was that received by Judge Clark?
16 A. That was received in the afternoon of that day, I think between two and three or three and four o'clock, I am not positive which.
Q. After the receipt of that telegram did you, at Judge Clark's direction, have any further communication with Sheriff Shipp?
A. Yes, sir; he told me to take the telegram to Captain Shipp and read it to him.
Q. Did you do so?
A. Yes, sir.
Q. Did you accompany that with anything?
A. I think I made a copy of the section that the telegram referred to. I am not positive of that. I believe I did, though.
Q. The section of the Revised Statutes?
A. Yes, sir; section 766, at Judge Clark's request. I think he told me to copy it and take it along with the telegram.
Q. Where did you find Captain Shipp, and how? What effort did you make to find him?
A. He was at the jail.
Q. He was at the jail?
A. Yes, sir.
Q. Did you telephone him before you went down or not?
A. I think I did.

Q. Did you find him?
A. Yes, sir; he was there.
Q. At about what time of the day?
A. It was late in the afternoon.
Q. Can you give the hour approximately?
A. I should say it was about five o'clock.
Q. That was on March 19th, 1906?
17 A. Yes, sir.
Q. Did you show him the telegram, or read it to him? What did you do?
A. I think I handed it to him and let him read it.
Q. Did he make any statement at that time?
A. No, sir.
Q. Did he make any statement at the time you telephoned him the day before?
A. No, sir.
Q. Did you see that mob, or a mob that night that took Johnson out of jail?
A. I was there; yes, sir.
Q. Please give us an account, in your own language, of what you saw, stating what time you went and how you happened to go.
A. It was after ten o'clock when I went around there. I had been down to the "Stag" saloon, with a friend. We went in there and he got a drink and I got a cigar, and as we came out we met a gentleman by the name of Harry Webster.
Q. Harry what?
A. Harry Webster. He said, "Did you know the mob was at the jail?" I said, "No; it is not. I just passed *the* there half an hour ago."
Mr. PRITCHARD. I object, Mr. Commissioner, to his giving the conversation between him and Harry Webster or anybody else.
Mr. SANFORD. I do not care for it, Mr. Commissioner. I did not intend to call for the conversation.

By Mr. SANFORD:

Q. How do you fix the time as ten o'clock?
A. I was playing bridge whist on that night with some
18 ladies and gentlemen. I went down first to Miller's pharmacy, and was sitting there, and this man met me. He said, "Let's go down and get a drink;" and he looked at his watch and it was five minutes of ten.
Q. Before you went down to the "Stag" saloon?
A. Yes, sir. He said, "If we hurry, we have just got time to get there before it closes."
Q. How long were you there?
A. I suppose five or ten minutes.
Q. How far is that from the jail?
A. About two blocks and a half.
Q. On your way down there from where you had been playing bridge whist, did you pass close by the jail or not?

A. I passed in view of it; I looked up that way.
Q. You passed in view of it?
A. Yes, sir.
Q. Was there any uproar or apparent excitement?
A. None whatever.
Q. After meeting this Mr. Webster—and what are his initials?
A. All I know him by is Harry Webster.
Q. Did you go to the jail?
A. We all three walked to the corner back of the Presbyterian Church. We did not see any sign of any mob, and he and Mr. Flournoy went on home, and I just made the remark, "I believe I will walk up there and see." So I walked on up to the jail.
Q. How long was that after you had been at the "Stag" saloon?
A. Ten or fifteen minutes.
Q. What did you do when you got to the jail? Describe
19 the situation.
A. Why, there was quite a number of people out against the stonewall there of the court-house, and quite a number inside the office of the jail, and a great number up in the jail.
Q. What were the people who were up against the stonewall doing? Were they aiding, or were they bystanders?
A. Just standing there looking on.
Q. In what capacity were you there; as a bystander?
A. Yes, sir; I was looking on.
Q. Did you go in the jail?
A. I went in the office of the jail; yes, sir.
Q. You went in the jail?
A. Yes, sir.
Q. What did you find in there?
A. I found a great many people in there. I didn't stay but a minute or two, because about that time they got the door open and I thought it was time to get out.
Q. Did you see anybody working on the door at that time when you were in there?
A. No, sir. I could hear the licks.
Q. Were the people you saw in there engaged in the mob or were they just simply looking on, as you were?
A. Just looking on, as I was.
Q. Did you see anyone in there apparently connected with the mob?
A. No, sir.
Q. You did not?
A. No, sir.
Q. Did you see anyone armed?
20 A. No, sir. I saw one gentleman with a Winchester, I believe, but I didn't know who he was. He had picked it up off the flo'r, I think, and had it in his hand, and he may have stuck it back in the case there.
Q. You say you remember licks. What kind of licks were those?

A. Licks like they were being made on iron.

Q. With sort of an implement?

A. A heavy instrument. I don't know what it was. I could not say.

Q. Did it sound something like an ax, or anything of that kind?

A. Yes, sir; it may have been. I don't know. It was heavy licks.

Q. Somebody battering on iron—that was the impression?

A. Yes, sir.

Q. And you say shortly afterward, or almost as soon as you got in there, the door was broken down?

A. Yes, sir.

Q. How do you know that?

A. I heard somebody say, "There it goes," and I supposed—the licks ceased.

Q. You did not see the door break then?

A. No, sir.

Q. Did anybody come out shortly after that with Johnson?

A. Yes, sir. I ran across the street and got in the court-house yard. In a few minutes they came out with him.

Q. How long was it before they came out?

A. Right immediately after I went across there. I had no more than gotten over there.

Q. Within a few minutes?

A. Yes, sir; within a few minutes.

21 Q. How many men were with him—had him in custody?

A. I could not tell you.

Q. Give us your best judgment.

A. It didn't seem to be over fifteen or twenty around him. Then, of course, after he came out, the crowd outside joined behind.

Q. That was the crowd of bystanders you speak of?

A. Yes, sir.

Q. But the crowd that had him in custody seemed to be about fifteen or twenty?

A. A small number; yes, sir.

Q. How did they have him in custody?

A. I was not close enough to see.

Q. Were they disguised in any way, these fifteen or twenty men who had him in custody?

A. I think some of them were. They had some handkerchiefs tied on their faces. I am not positive of that.

Q. How were they tied; around the faces?

A. Around the eyes and over the ears.

Q. Across the lower part of the face and over the ears?

A. Yes, sir.

Q. Were they armed?

A. I couldn't tell you. I didn't see any weapons of any kind.

Q. Did you see the sheriff there that night?

A. No, sir.

Q. Did you see any of his deputies there that night?

A. No, sir. I don't know any of his deputies.
Q. You do not know any of his deputies?
A. No, sir.
Q. Did you recognize any of those fifteen or twenty men who were in that mob?
22 A. No, sir.
Q. Did you follow them out as they took Johnson away?
A. Yes, sir.
Q. Where did they take him?
A. To the county bridge over the Tennessee River.
Q. How far is that from the jail?
A. Six or seven blocks.
Q. Were they molested on the way? Was there any effort made to recapture the prisoner from them by any of the authorities?
A. I did not see any. I don't know. I was back of crowd.
Q. You followed the crowd on?
A. Yes, sir.
Q. Did the sheriff or any of his deputies come after you and make any effort to——
A. I understood they had the sheriff locked up.
Q. You do not know that yourself?
A. No, sir.
Mr. SANFORD. I object to that, may it please your honor, as hearsay testimony.
The COMMISSIONER. Note the objection.

By Mr. SANFORD:

Q. So far as you know, there was no effort made by any of the authorities to recapture him?
A. No, sir.
Q. As he went on out, did anybody have hold of Johnson?
A. I think so.
Q. How did they have him? How did they keep him from getting away?
A. They were all around him. Possibly a man on each
23 side had hold of his arm. It looked that way when he came out of the jail.
Q. Did you recognize any of the men who were in the mob? I mean by the mob the men who had him in custody and were lynching him.
A. No, sir.
Q. Did they lynch him?
A. They shot him to death.
Q. They shot him to death?
A. Yes, sir.
Q. Did they first try to kill him another way?
A. Yes, sir; they tried to hang him but the rope broke.
Q. Then he was shot to death?
A. Yes, sir.

Q. How many men shot him; do you know?

A. I don't know.

Q. How many shots were fired?

A. I could not tell you.

Q. How long did it take out there after they got to the bridge before they killed him?

A. Not exceeding ten minutes, I shouldn't think.

Q. Just tell us what they did—the whole proceeding after they got out there.

A. They carried him to the first arc light, I think, on the bridge, and he had a rope around his neck when I first saw him. They threw it over one of the girders of the bridge and went to haul him up and the rope broke and he fell to the floor. They picked him up and tied it again and pulled him up, and about the time they got him three or four feet in the air they commenced to shoot and the rope broke again. He fell to the bridge and the crowd surged back,
24 and by that time I got away. There were so many shots being fired that I got behind one of those wide pieces of iron that run up the bridge, and got out of the way of the bullets.

Q. Was there quite a fusillade then, a number of shots fired?

A. Yes, sir; there were a number of shots fired.

Q. Did you see anyone shooting after he was down, lying on the bridge?

A. I think after the mob got away somebody shot into him, but I don't know who it was.

Q. Did you recognize any of the men who shot him?

A. No, sir.

Q. Did you recognize any of the bystanders that night? I mean the men who were not participating in the mob, but, like yourself, were there looking on?

A. I was with one or two. I knew them.

Q. Who were they?

A. I was with John Head and I think Sezley Sharpe were the two boys I was with.

Q. Who else did you recognize out there among the bystanders?

A. I never paid much attention to the bystanders. I was busy watching the proceedings, and outside of the two boys I was with I never paid any attention to them.

Q. Did you see again out there either Mr. Webster or the other gentleman, Mr. Flournoy?

A. Yes, sir; I saw Mr. Flournoy after I came back from the mob. He was on his way from there, too.

Q. Coming back? You did not see him out there?

A. No, sir.

Mr. SANFORD. You may cross-examine, gentlemen.

25 Mr. PRITCHARD. There is only one matter to which I desire to call your honor's attention. The witness in the early part of his testimony made some statements with reference to some conversation he had with a man by the name of Webster. Subsequently

he recurred to that by some remark which he made to the man who was accompanying him. I ask that both of those remarks be excluded.

Mr. SANFORD. Surely.

Mr. PRITCHARD. I suppose you did not call for the last remark?

Mr. SANFORD. I did not call for it, and those remarks may be considered as not in evidence.

The COMMISSIONER. The stenographer will note the statement.

Mr. PRITCHARD. We do not care to cross-examine.

Mr. SANFORD. Mr. Brazelton is engaged in a very important case at home, and they wish him back. Is there any objection to his going?

Mr. PRITCHARD. None at all.

Mr. HARMON. Will he come back if he is called for?

Mr. SANFORD. You can come back if you are called for, can you, Mr. Brazelton?

The WITNESS. I suppose so.

Mr. SANFORD. Then you may go, with that understanding.

The WITNESS. All right, sir.

26 L. G. WALKER, a witness produced on behalf of the Government, and after being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Mr. Walker, what is your business and position?

A. I am editor in chief of the Chattanooga Times.

Q. Were you occupying that position in March, 1906, at the time of the Ed. Johnson lynching?

A. Yes, sir.

Q. Have you the files of the paper of March 11th, March 18th, and March 19th, 1906, with you?

A. Yes, sir.

Q. I will ask you about the Times. Is it a paper of general circulation in the city?

A. Yes, sir.

Q. Is it the morning paper?

A. Yes, sir.

Q. Has it an extensive circulation in the city and county?

A. Yes, sir.

Mr. SANFORD. I wish to offer in evidence, gentlemen, just certain portions of this paper. The first one is an article on the first page of the issue of March 11th, 1906, headed "Johnson may appeal to U. S. Supreme Court."

Mr. PRITCHARD. For what purpose is that offered, Mr. Attorney-General?

Mr. SANFORD. The object of that is merely to show that the fact had been published in the city at that time that Judge Clark had granted a stay of execution allowing an appeal, if an appeal should be perfected, to the Supreme Court. That is the only purpose and the only object for which it is offered.

27 Mr. PRITCHARD. The date of that publication is March 11th?

Mr. SANFORD. March 11th.

Mr. PRITCHARD. The alleged contempt was committed on March 19th?

Mr. SANFORD. March 19th.

Mr. PRITCHARD. I object to the introduction of that newspaper for any purpose whatever as tending to reflect on the question of whether or not the defendant, Shipp, and his deputies are guilty of a contempt of the court committed on the 19th by the violation of an order that could not have then been in existence, or as reflecting in any way upon the question at issue.

Mr. SANFORD. It is not offered as an evidence of violation of Judge Clark's order. It is offered as an evidence of knowledge of the fact that a stay of execution had been granted for the ten days and as bearing on some matters that may be introduced in evidence as to things that occurred between that and the 19th. I understand the rule to be that you are sitting as a master in chancery under the rules, and that in a case of exception to competency the exception simply is noted and the testimony only goes to the court.

The COMMISSIONER. That is all. The stenographer will note the objection.

Mr. SANFORD. I simply wish to introduce this one article in this issue without introducing the whole paper.

Mr. HARMON. Let it be understood that that exception is for all of the defendants, so that the exception will not have to be repeated.

Mr. SANFORD. Precisely.

Said article is in words and figures following, to wit:

"JOHNSON MAY APPEAL TO U. S. SUPREME COURT.

"Judge Clark grants stay of execution in case of noted
28 negro.

"Hanging impossible now for nearly two weeks.

"Petition for writ of habeas corpus dismissed, but delay order issued—Judge McReynolds relieved of all blame and Judge Shepherd tenders open apology for language in bill which was warmly resented by state jurist.

"[Staff correspondence Chattanooga Times.]

"Knoxville, Tenn., March 10.—It was near the hour of midnight before Judge C. D. Clark, of the Federal Court, reached a final utterance in the Johnson habeas corpus case, the decision being that the application must be denied and the petition dismissed. Attorneys in the case were in consultation with Judge Clark until the morning hours on the question of an appeal.

"Capt. Shipp at this hour intends to leave Knoxville at 4 o'clock with the prisoner and will probably arrive in Chattanooga with him

by 7 o'clock. Johnson will be taken to the jail at once and put in isolation.

"The feature of the argument of the case was a public apology in generous terms delivered by Judge Shepherd to Judge McReynolds. Judge Shepherd disclaimed any intention to assail the integrity of the trial court and expressed his regret "t the extent to which objectionable language had been used in the petition.

"So great was the interest in the case in Knoxville that the federal court room remained crowded up to adjournment, which was at the midnight hour.

29 "At the close of an investigation of authorities on the subject, Judge Clark at 1 o'clock this morning ruled that he could not grant an appeal, but he found that he had authority to grant a stay of execution. He accordingly ordered that Ed Johnson be turned over to the custody of the sheriff of Hamilton County so to remain for ten days pending application to the Supreme Court of the United States for a writ of error based upon the habeas corpus proceedings. The execution will therefore not take place before March 23.

"The hearing on the habeas corpus application of Ed Johnson resulted this afternoon in a complete vindication for Judge S. D. McReynolds against whom had been lodged charges of a most sensational character in the petition. Paragraph by paragraph was the petition taken up and not only was there a failure on the part of the petitioners to prove malfeasance in the trial of the case, but the State introduced evidence which was in all respects an absolute refutation of the charge.

"Judge McReynolds took the witness stand in a detailed narrative of his actions at the memorable trial and so established his own official rectitude that Judge Clark at its close said in open court that there was no ground for criticizing the trial judge.

"Who wrote the now famous petition is a question as yet unanswered. N. W. Parden, the negro lawyer, was put on the witness stand for the petitioner. The first question propounded to him on cross-examination by Mr. Daniels was: 'Did you draw that petition?'

"'Not all of it,' replied Parden.

"'Who did?'

"'Other counsel assisted me.'

30 "'Who were they?'

"'Attorney Hutchins drew part of it.'

"'Who else?'

"'Judge Shepherd drew another part of it.'

"'Is it not a fact that Judge Shepherd drew the entire document and that you copied it?'

"This last question was not answered. Objection was raised by Johnson's attorneys and Judge Clark decided that inquiry along that line had served its purpose and stopped the interrogatories.

"Considerable surprise, even here in Knoxville, was occasioned by the fact that Judge Lewis Shepherd again appeared as conducting counsel for Ed Johnson. It had been understood here, as well as in Chattanooga, that the two negro lawyers were to conduct the case on the claim of having been employed by Johnson's father. The first occurrence when the trial was taken up this afternoon at 2 o'clock, was the announcement by Parden that Judge Shepherd would conduct the case. Parden then proceeded to read the petition, the contents of which were detailed to some extent in yesterday morning's Chattanooga Times. It was new to a large majority of the crowd of listeners, and as Parden, in a decidedly theatrical style proceeded to read the long document, there were wondering looks cast in the direction of Judge McReynolds, who sat within the bar, since almost its every allegation was directed to his judicial character.

"It was a mixed crowd that assembled in Judge Clark's court room to hear the application for a writ of habeas corpus which, if sustained, in the end would result in the final freedom of Ed Johnson. For more than half the crowd were negroes, and as the petitioner's case was presented they crowded up as close to the court as they
31 could get. Within the bar sat many of Knoxville's ablest attorneys, while Chattanooga was represented by Judge McReynolds, M. N. Whittaker, E. S. Daniels, Capt. Shipp, Foster V. Brown, W. G. M. Thomas, J. P. Pemberton, A. W. Brazelton, the two negro lawyers, and others.

"During the past two or three days the negro lawyers and a Chattanooga negro preacher named Fleming had been circulating among Knoxville negroes and had popularized the case. They came to the court in large numbers, ready to predict an instant release for Johnson. After Parden had read the petition, Mr. Whitaker read an answer, which was very voluminous and covered every detail of the case and denied in all particulars every allegation of the petition.

"Judge Shepherd called Mr. Brown to the stand. It will be remembered that Mr. Brown was a member of the advisory committee appointed after the trial. He stated that he had served as such at the request of Mr. Thomas, although the petition characterized the committee 'as Judge McReynolds' committee.' He told of all the proceedings of the attorneys after the trial, and admitted that the trial lawyers had said that there were no errors in the case upon which a reversal could be secured. He had united in the final decision not to move a new trial and appeal if denied.

"W. G. M. Thomas was also a witness called in support of the petition. He occupied the witness stand for over an hour, and told the entire story of the trial from his appointment. He had learned of his appointment by accident, having seen it published in the Chattanooga Times before he was notified. Mr. Thomas denied during the course of his testimony many of the allegations of the petition and assumed entire responsibility for the appointment of the advisers.

"J. P. Pemberton was called by Judge Shepherd to tell
32 about negroes' names in the jury box. He described the draw-

ing of the jury, but did not know how many negroes had been drawn. He knew of three that had served, one for a full term of two weeks, less than a year ago. He said there was no way to tell how many negroes had been drawn, or why they had not served in general when drawn. They might have been disqualified, or the officers might not have found them.

"This was the crucial question of the case, since it was set out as the specific violation of the Federal Constitution upon which Johnson's final release was to be prayed. Mr. Pemberton, being the clerk of the Criminal Court, was only qualified to speak on methods of drawing juries in Hamilton County, but his testimony was strongly indicative that negroes' names had been in the jury box. In testimony on this point Mr. Pemberton said that Judge McReynolds had nothing to do with drawing of juries further than to order the commissioner to draw a given number.

"Attorney General Whitaker and Judge McReynolds testified in behalf of the State. The attorney general in his accustomed lucid manner told the entire story of the trial from the arrest of Johnson. As he told of the dramatic incidents that occurred during the trial there was the same nervous interest among the spectators that has always been noticed when Miss Taylor's manner of identifying Johnson was detailed.

"Judge McReynolds devoted his time on the stand to a defense of himself, and he covered the entire ground of the petition. In beginning his statement he said:

"'I hope the court will pardon me, but there are some things in that petition that apply solely to me as an official. I want to say that there are statements there that are maliciously false. Any one can make infamous and slanderous statements like those in the
33 petition, but it is a different matter to prove them. When they charged that I, outside of my court room, said I would deny a continuance or charge of venue they utter an infamous falsehood, and I believe the man that wrote it knew it was false when he wrote it. It is charged that I refused Johnson's father and mother admission to the trial. That is also false. At that time I did not know even that Johnson had any father and mother.'

"Thus he proceeded throughout the petition, making vigorous denials of every charge against him in the petition. A colloquy occurred between him and Judge Shepherd which included the memorable attack by the latter in his address to the Johnson jury. Judge Shepherd publicly disowned any intention or desire to offend Judge McReynolds and suppressed ill feeling that has existed since the tense events of that day was in a measure mollified."

34 Mr. SANFORD. I wish to introduce in evidence the article on page 6 of the issue of March 18th, headed "Day of doom is very near." That is offered for the purpose of showing the publication contained in that article, that an application for an appeal had been presented, or would be presented, to Mr. Justice Harlan.

Mr. PRITCHARD. That is objected to, not only for the reasons already stated concerning the publication of the 11th, but for the further reason that on March 18th it appears, from the proof already introduced, a telegram had been received from Mr. Justice Harlan to Judge Clark, the contents of which telegram, according to the testimony of Mr. Brazelton, was on that afternoon communicated to Mr. Shipp. Now, we object to undertaking to prove the communication of facts of that sort by newspaper publication. There is higher and better evidence. We also object to it for the further reason that it would not be admissible in any case unless it were proved that Capt. Shipp, the defendant, and his deputies had read the publication.

The COMMISSIONER. The stenographer will note the objection.

The newspaper article just offered in evidence by the counsel for the Government is in words and figures following, to wit:

"DAY OF DOOM IS VERY NEAR.

"Ed Johnson scheduled to die next Tuesday.

"Negro is apparently indifferent to fate.

"Shows no interest in efforts supposed to be in progress in his behalf at Washington.

35 "So far as could be learned last night there was no definite action taken by the Supreme Court of the United States or any member thereof in the Johnson case yesterday. A late dispatch from Washington stated that the court was not in session yesterday and if there was any presentation of the case to any justice there was no publicity given to the proceeding.

"As Johnson's day of doom approaches interest in the prisoner seems to increase, a fact shown by the number of people who daily desire to see him. He is very popular with the kodak fiends and readily submits each day to a number of picture enthusiasts who obtain permission to visit him. Johnson agrees in every instance to take his position under the skylight and pose in his best manner for the picture hunters.

"No less than five camera men leveled their instruments on him yesterday. To each of them he made the request that he be given prints of the pictures made.

"SHOWS NO INTEREST IN APPEAL.

"If Johnson has any interest in the heroic attempt being made at this time by Lawyer Parden to prolong his life he does not show it in any way. He has not asked a question concerning the progress of the appeal now being prosecuted at Washington. In fact he has made no inquiry on the subject since he signed the last document before Parden left the city on his mission to the Supreme Court. The impression the prisoner has made is that he does not appreciate the slender thread upon which his fate is suspended.

"In the basement of the jail stands the instrument of death, perfect and tested in every particular. The hangman's rope, fatal in its past history to no less than 200 persons convicted of capital crimes,
36 dangles from its fixture in a firm joist above. It is equal to the event which the governor's order will require of it next Tuesday, having been tested repeatedly during the recent days, a rock of weight equal to that of the average human body having been dropped by a pull of the trigger cord to establish the trustworthiness of the apparatus. When the drop is made in the practice that is necessary to familiarize the officers with the process, the sound reverberates through the jail and sends terror to the hearts of the superstitious negroes who occupy the black ward.

"Lawyer Parden's last act before going to Washington was to secure Judge Clark's signature to the bill of exceptions, which embraced a complete record of the hearing at Knoxville a week ago. Parden stopped in Knoxville on his way to Washington and presented the record to Judge Clark. The record consisted of the petition in the case, the answer of Attorney-General Whitaker, the oral evidence given at the hearing, and the judgment of the court.

"LAWYER'S WORK AT WASHINGTON.

"Arriving at Washington it was Parden's first task to find Justice Harlan, who is at present assigned to this judicial circuit. The record would be submitted to Justice Harlan, whose duty it would be to examine it and then make an order either allowing or denying the appeal. The former would end the whole matter, while the latter would occasion a further stay of execution unless a hearing on the record could be arranged for Monday.

"The proceeding before Justice Harlan is in the nature of an ex parte hearing and practice makes it obligatory upon the defense to produce a prima facie case before the justice would be justified in taking any sort of action. Failing in that the appeal would be dismissed with no further chance for a hearing.

37 "Parden probably encountered a serious difficulty when he arriven in Washington. He is not entitled to practice before the Supreme Court and he must need either qualify as a practitioner or secure some attorney to present his case. A fee of $20.00 is required for license to practice, and the applicant must be vouched for by some recognized authority as a lawyer licensed to practice in the supreme court of Tennessee. Lawyers here are speculating on the question whether it will be found cheaper to pay the fee and qualify or to employ some Washington attorney already authorized to practice.

"THREE JUDGES IN CIRCUIT.

"In connection with the information that Justice Harlan would be the proper medium for beginning the case in the court of last resort, it is interesting to note that three supreme justices reside within this judicial circuit. Justice Brown resides in Michigan. He is the

member of the Supreme Court for whose seat Secretary Taft is slated. Justice Day is a resident of Ohio and Justice Harlan of Kentucky. The circuit is composed of Michigan, Ohio, Kentucky, and Tennessee. With Taft appointed as Justice Brown's successor, two supreme justices would be residents of Ohio. However, Justice Harlan is assigned at this time to the district which includes Tennessee.

"The admission was made by Judge Shepherd yesterday that the negro's only chance lay in the allegation of duress which ultimately caused a violation of the fourteenth amendment in the conduct of the Johnson trial. The danger of a mob was set out as a reason why Johnson was not afforded the 'equal protection of the law' mentioned in that amendment. Judge Shepherd has written to Judge Clark a letter acquiescing in his ruling that the fifth and sixth
38 amendments could not be applied to proceedings in the state court."

Mr. SANFORD. Then in the issue of March 19th we desire to offer in evidence the article on page 5, entitled "Justice Harlan allows appeal of Ed. Johnson."

Mr. PRITCHARD. We object to that on the grounds already stated.

The COMMISSIONER. Note the objection.

Mr. SANFORD. That is offered for the general evidential purposes of showing that the fact that an appeal had been granted was generally circulated in the community on the morning of March 19th.

By Mr. SANFORD:

Q. May these articles be detached from the paper? May we just take those pages, or are these your office files?

A. They are files of the office. I would rather have them copied, if possible. If not you can take the papers out.

Mr. PRITCHARD. Just have them transcribed.

The COMMISSIONER. The stenographer will transcribe them.

Mr. HARMON. We can not afford to have the files of the Times mutilated.

Mr. SANFORD. No; they ought to be preserved for historical purposes.

Said article is in words and figures following, to wit:

39 "JUSTICE HARLAN ALLOWS APPEAL OF ED JOHNSON.

"U. S. Supreme Court will review negro's case.

"Time of execution is now uncertain.

"Judge Clark receives telegram telling of the action taken.

"Some dramatic incidents take place at county jail.

"Prisoner baptized and received into church amidst shouts of religious enthusiasts.—Says he has experienced change of heart and has no hard feelings towards any one.—He still maintains his innocence.

"The sentence of death pending against Ed. Johnson will not be executed to-morrow. An appeal has been granted by the United States Supreme Court and it cannot be predicted when an execution will take place, since the granting of an appeal nullifies all previous orders of the state court and necessitates a resentencing of the prisoner in any event, if indeed it does not occasion a new process from indictment to trial and verdict.

"The following telegram was received late yesterday afternoon:

"'*Justice Harlan's telegram.*

"'WASHINGTON, D. C., *March 18.*

"'To Hon. C. D. CLARK,
"'*U. S. Circuit Judge,*
"'*Chattanooga, Tenn.*

"'Have allowed appeal to accused in habeas corpus case of Ed. Johnson. Transcript will be filed to-morrow and motion also made by Johnson's counsel for formal allowance of appeal to court.

"'JOHN M. HARLAN, *Asso. Justice.*'

"After the Chattanooga Times was put in possession of the above telegram advice was sought from competent legal authority as to the significance of Justice Harlan's action. Citation was made to section 766, Revised Statutes of the United States, and an opinion of the Supreme Court on that section in the case of Lambert vs. Barrett, 159 U. S. Reports, page 660, for definite information. From these authorities it was learned that the granting of an appeal in a case like this acted to supersede all process in the state courts. No stay is necessary, according to the authorities, and the statute is self-operative. Pending a decision of the appeal there can be no execution by any state authority.

TWO ALTERNATIVES NOW.

"There are two alternatives depending upon the final decision in Washington. In case the appeal is dismissed, which may be done at noon to-day, the prisoner will be remanded to the state court at once and then must be again taken into open court and resentenced, giving another term of from thirty to sixty days between the time of sentence and its execution.

"In case the petition for a writ of habeas corpus is granted under the record in the case, the prisoner will be released from custody under his present conviction and the state court will have the privilege, in case it is found feasible, to indict him and try the case again. It is given out by competent legal authority that the grounds for a re-

lease will be the sustaining of the defendant's contention that his constitutional rights have been violated.

41 "JOHNSON BAPTIZED.

"What was presumed to be Ed. Johnson's last Sunday on earth proved to be a busy one for him and was no doubt considered full of events momentous for him. All day long he had visitors, and in the afternoon religious services were held for him, and he was baptized in accordance with the rites of the Baptist Church.

"Rev. W. B. Fleming, of the St. James Baptist Church (colored), conducted the services, many of his congregation being present. Hymns were sung in the fervent style of the negro religionists, and at various times the women became noisy in their demonstrations of pious joy, the shouts, exultations, and songs being heard for several squares around the jail.

"The preacher took a text and preached a set sermon, and people who heard it say it was an eloquent effort. At the close of the discourse the preacher announced that the services were for the benefit of the prisoner, who was believed to be face to face with death, and he then called on Johnson to say something concerning his religious feelings. The prisoner folded his hands before him in an attitude of devotion and said in the low, musical voice that figured in his trial:

"JOHNSON MAKES TALK.

"'I have had a change of heat, and I am ready to die. The change came over me all at once, and I can't tell how it was. Before the change I hated the people that were against me; I couldn't eat, and could only think of the arrest and the trouble I was in. I didn't want to talk or eat, and didn't want to see anyone. All at once I said that I was willing to give up my friends and folks, and life itself if I had to, and then I felt different. I didn't hate the
42 white people any more, my appetite returned, and I am proud now to have anybody come to see me. Some one asked me that day what made me eat, and I said that I felt different and was ready to face anybody. This change of feeling has stayed with me and I feel that way yet.'

"As the negro spoke there were warm responses by all the men and women gathered around him. The preacher said that he would proceed in the regular way, and he commenced catechizing Johnson according to the rules of the church. After that was concluded and seemingly satisfactory answers had been given, the preacher said that a motion was in order to receive Johnson into the folds of the church.

"RECEIVED INTO CHURCH.

"Some deacon spoke up and said, 'I move that Brother Ed Johnson be received into membership of the St. James Baptist Church

and accepted as a proper candidate for baptism, since he has here made a public profession of his faith.'

"The preacher put the motion, and it carried without any dissenting vote. Arrangements were then made for the baptism. The bath tub, which stands at one end of the corridor where Johnson is confined as a solitary prisoner, was called into requisition and filled with water. In that Preacher Fleming immersed Johnson, pronouncing the usual Protestant ceremony as he did so.

"Johnson came out of the water in a paroxysm of emotion. He started down the corridor clapping his hands and with his eyes raised wildly toward the ceiling. His conduct further excited the women, and as they began shouting and singing some of them fell prostrate on the floor, one of them apparently going into a trance.

"Johnson returned shortly and said he had forgotten to say
43 anything about the crime of which he was accused. In a few words he reiterated his oft-repeated innocence. The preacher and others spoke words of encouragement to him, which indicated that a miracle was expected to effect his escape from the gallows. One of the deacons was called on to pray, and the meeting broke up.

"LARGE CROWD AT JAIL.

"During the long services up stairs the lower portion of the jail was crowded with negroes, all eager to catch any sound that came from Johnson's cell. The crowd was packed into the lobby to such an extent that the jailers could control the situation only with difficulty and it extended outside almost to the street.

"A bystander made a striking comparison of the crowd yesterday with that of January 25, when the jail was crowded in like manner but with angry white citizens. There was not much difference in the difficulty encountered by the officers in handling yesterday's crowd, but hostility was replaced by curiosity and interest. All the negroes were continually calling to mind that it was probably Johnson's last Sunday of life.

"Visitors to the prisoner yesterday were not all confined to his negro friends. A morbid desire seemed to possess large numbers of white people to see the prisoner. Many of them left him fruit, sweetmeats, and delicacies, and last night his cell was well filled with the day's offerings. There were numbers of oranges, apples, cakes, and other good things to eat, and books and magazines were also left for him to read. He appeared glad to see all who called, and talked freely when spoken to.

"Preparations for the execution had been practically completed, but of course there will be a pause in that regard now. The prisoner was not informed last night of the news from Washington."

44 By Mr. SANFORD:

Q. Mr. Walker, how far was your editorial room from the jail?

A. About two blocks.

Q. Was there any general noise or disturbance in the street that night of the 19th that reached your editorial rooms? Were there any crowds or was there a mob in the streets?

A. No, sir; I am pretty high up and pretty well excluded from the noise of the street. My office is on the sixth floor of the building.

Q. Did you personally see anything or hear anything of that sort?

A. No, sir.

Q. Did you hear anybody that evening communicating by telephone to Sheriff Shipp?

A. Yes, sir.

Q. Who was that?

A. Attorney-General Whittaker.

Q. State when that was, and relate the circumstances, and state what he communicated to Sheriff Shipp. Give the hour as nearly as you can.

A. I should say it was about quarter to nine in the evening—between half past eight and nine o'clock. Mr. Whittaker came into my office and asked me if we had heard of any trouble at the jail.

Q. Was there anyone with him?

A. Yes, sir; Judge McReynolds was with him.

Q. Who is Judge McReynolds, and who is Mr. Whittaker, please?

A. Judge McReynolds is the judge of the criminal court of this circuit.

45 Q. And who is Mr. Whittaker?

A. He is state's attorney—attorney-general.

Q. Of this county?

A. Yes, sir.

Q. They were the judge and the attorney-general of the criminal court of this county?

A. Yes, sir.

Q. They had tried the Johnson case?

A. Yes, sir; he tried the Johnson case.

Q. And they came in about quarter to nine, would you say?

A. I would say it was half-past eight or nine o'clock. I didn't note the time, but I think it was about that hour.

Q. Half-past eight or quarter to nine?

A. Yes, sir.

Q. State what Mr. Whittaker communicated to Sheriff Shipp.

A. He stated that he had seen a party of persons whom he regarded as rather suspicious going in the direction of the jail. He first telephoned to Sheriff Shipp at the jail and apparently did not find him in there. He changed the number to his house and asked him if he knew of any such thing, and suggested, as a matter of caution, that he had better come down to the jail. What Sheriff Shipp said to him I don't know, but apparently he said that he would, because he said, "That is all right; I think you had," or something to that effect.

Q. You mean Mr. Whittaker said, "That is all right; I think you had?"

A. Yes, sir.

Q. But you do not know what Sheriff Shipp said to him? You did not hear that?

46

A. No, sir.

Q. Did you have any communication yourself with him that evening?

A. No, sir.

Q. Did he come to the office?

A. No, sir. If he did come, I did not see him.

Q. Did he telephone to your office?

A. No, sir; he did not telephone to my part of the office. I did not hear from him that evening at all.

Q. Did you see the mob yourself?

A. No, sir; I did not look out.

Q. So far as you know, was there any general disturbance in the street that evening?

A. None that I saw at all.

Q. You saw no member of the mob?

A. No, sir.

Q. You were not on the street at all yourself?

A. No, sir; not until I went home, and at that hour it was very quiet, and there was nobody at all on the street.

Mr. SANFORD. You may cross-examine.

Mr. SHEPHERD. We do not care to ask him anything.

Cross-examination by Mr. PRITCHARD:

Q. With respect to the time that you say you heard the telephoning from Attorney-General Whittaker to Sheriff Shipp, may not it have been later than the hour you mentioned?

A. I have no way of reckoning the time except that I had

47

been to my dinner and had returned. I usually get to the office about half-past eight o'clock in the evening from dinner, and it was some little time, I don't know just how long, after I got back from dinner that they came in. It might have been nine o'clock or it might have been a little after nine. I couldn't positively say, but it was after my dinner and after I returned to the office some little time.

Q. In answer to a question of Mr. Sanford, you stated that at the time you refer to, namely, about the time of this telephone message, there was no disturbance that you knew of in the street. Had there been anything that afternoon to attract your attention, or anything unusual in the appearance of the streets to cause any apprehension on your part? Did you see any signs or indications of a mob or a lynching?

A. No, sir; none at all.

Redirect examination by Mr. SANFORD:

Q. Mr. Walker, how much had you been on the street that afternoon?

A. Well, I am not usually on the street very much in the afternoon.

Q. Had you been at the Times office that afternoon?

A. Yes, sir; I think possibly I got into the Times office probably about five or o'clock or quarter to five.

Q. And then you staid there until you went to your supper?

A. Yes, sir.

Q. Did you go by the jail on your way to supper?

A. I went within one block of the jail.

Q. What street did you go?

48 A. I went out Georgia avenue.

Q. You did not go by the jail?

A. No, sir.

Q. Did you come back by the jail?

A. No, sir.

Q. At what hour did you go to your supper?

A. I went out Georgia avenue to McCallie street, or Oak, I have forgotten which.

Q. I say, what hour; what time?

A. About six o'clock, or a quarter after six.

Q. And you went out Georgia avenue about six and came back somewhere near half-past eight?

A. Yes, sir.

Q. And did not go by the jail at all?

A. No, sir.

Recross-examination by Mr. PRITCHARD:

Q. The Times office is about opposite the point of the intersection of Walnut street and Georgia avenue?

A. Well, yes; it is a little bot south of it.

Q. And the jail is on Walnut street?

A. Yes, sir.

Q. Opposite the jail there is an open park in which the court-house is?

A. Yes, sir.

Q. And you were on the street immediately east of Georgia avenue, the next street to it?

A. Yes, sir.

49 Q. And there was no obstruction, in the way of buildings, between where you were and the jail except the court-house, which stands in that park?

A. No, sir.

Q. If there had been any noise there, anything unusual, you were in a position to have happened to hear it, were you not?

A. Oh, yes; I think so.

By Mr. SANFORD:

Q. Did you see any mob in the street that you think you could not have dispersed yourself?

A. I didn't see any gathering at all coming down.
Q. Nothing at all, no gathering at all?
A. It was perfectly quiet at that time. It seemed to be. I didn't notice any.
Q. Your office was on the sixth floor?
A. The sixth floor.

MILTON B. OCHS, a witness produced on behalf of the Government, after being duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Mr. Ochs, you are a citizen of Chattanooga?
A. Yes, sir.
Q. What is your connection with the Times?
A. I am the managing editor.
Q. Were you at your office on the evening of March 19th, 1906?
50 A. Yes, sir.
Q. Do you remember the visit of Judge McReynolds and Attorney-General Whittaker to the Times office?
A. I remember their being in the office, but there is a partition divides my office from Mr. Walker's office, where the conversation occurred, or was alleged.
Q. Did you have any conversation with them yourself that night?
A. I think we exchanged ordinary courtesies of the evening.
Mr. PRITCHARD. With whom is that?
Mr. SANFORD. With Judge McReynolds and Mr. Whittaker. My object is to get at the time.

By Mr. SANFORD:

Q. What time of the evening was it that they were there, Mr. Ochs?
A. That is very difficult to place exactly, Mr. Sanford. I should judge between half past 8 and 9 o'clock, to the best of my knowledge.
Q. Were you getting information as to the progress of that mob or as to the conduct of the mob that evening? Were you in charge of the paper, making it up?
A. Yes, sir.
Q. How long that evening was that mob engaged in forming, if you have any means of knowing?
A. My testimony along that line would not be of an exact character, because I was in the office all the evening. I didn't see the mob or any portion of it. I could only judge from the reports that were brought back by reporters.
Q. When did you first begin to hear rumors of the mob?
51 Mr. PRITCHARD. I object to that, if the court please. The witness says he does not know. Let him bring people who do know.
The COMMISSIONER. Note the objection.

By Mr. SANFORD:

Q. When did the rumors that the mob was forming first come into the Times Office, Mr. Ochs?

A. They reached me about half past eight.

Q. Then were there reports of the formation of the mob and its progress?

A. Yes, sir.

Q. On out until about what time?

A. Until the climax, I guess midnight.

Q. What length of time intervened from the time when the first reports of the formation of the mob, the rumors coming in, until the final climax of the mob?

A. I should say the final climax—I am considering it from the reports that reached me, not from information. Our men came back from the excitement in the near neighborhood of midnight.

Mr. PRITCHARD. Of course, the court will understand our objection must apply to all of this as being hearsay and inadmissible for any purpose.

The COMMISSIONER. Yes, sir.

By Mr. SANFORD:

Q. When did your men who had been reporting there come back?

A. As near as I can recollect, midnight.

Q. Who were they?

A. Mr. Chivington, Mr. Robert Pritchard, jr., and Mr. Kirby Wirt. I believe that was all.

52 Q. Do you remember which one brought you the first rumor or news that the mob was forming?

A. That it was forming?

Q. Yes; do you remember?

A. I don't think it reached me though a reporter.

Q. Did you send a reporter when you first heard of it?

A. I could not recall, but they understand, of course, on occasions of that sort they get to work without particular instructions. I sent one of them or two of them, probably, to assist the others.

Q. Do you remember who you sent?

A. Mr. Kirby Wirt, and I gave specific instructions, I think, taking him away——

Q. Where is your office in the Times building?

A. On the sixth floor.

Q. Is it an outside office or is it on the street?

A. It is the southern exposure of the building, as you would call it, on the sixth floor, adjoining Mr. Walker's office and the city editor's office.

Q. Is that the exposure on the same street the jail is on?

A. No, sir.

Q. It is on the opposite side of the building?

A. The jail is north of the building, and the only exposure from my office is south.

Q. It is the end of the building towards the court-house?

A. No, sir; this is south. The court-house is in that direction [indicating], and our office is this exposure of the building, the southern exposure.

Q. I mean your exposure is towards the court-house?

53 A. It is towards this court-house; yes, sir.

Q. I mean this court-house.

A. Yes, sir.

Q. Towards this court-house and away from the jail?

A. Yes, sir.

Q. Did you yourself hear anything of the noise made by a mob that night?

A. No, sir; I did not.

Q. Did you hear any outbreak at all?

A. I did not.

Q. Did you hear any general disturbance or mob in the streets that made a noise audible in your office?

A. If there was I don't recall it.

Q. Had you passed by the jail that evening?

A. I think not; not nearer than—well, I say passed by the jail. I was at that time living in Vine street, and I came in on Vine street and passed within the distance between the east side of the court-house yard and the jail. The jail is opposite the west side of the court-house yard.

Q. How far would that be in yards—150 yards?

A. Possibly two hundred. From the jail to the street it is possibly two hundred and fifty yards—or rather two hundred and fifty feet.

Q. When did you get to your office when you came back from supper that night?

A. I should judge about eight o'clock. However, I am not positive about the exact time.

Q. Did you see any of that mob at all that night?

A. None at all, sir.

Q. Or any member of it?

54 A. I did not; no, sir. I was not out of my office while it was supposed to be going on. I remained in the office.

Cross-examination by Mr. PRITCHARD:

Q. Mr. Ochs, how long did Judge McReynolds and Attorney-General Whittaker remain in your office, about?

A. I don't think they were in my office at all unless it was to make their exit from the office that adjoins mine. I am not positive about that. If at all, they remained there a very short while.

Q. Your office is in the southern end of the sixth story of the Times building?

A. Yes, sir.

Q. And Mr. Walker's office adjoins yours?

A. Yes, sir.

Q. And his is on the Georgia avenue side of the building?

A. Yes, sir.

Q. While they were in the building they were in Mr. Walker's office?

A. I judge so; yes, sir. They were not in my office.

Q. Do you know how long they remained there?

A. I don't know, sir. They were there when I reached there, and I don't think they staid there for any length of time.

Q. You reached there between half past eight and nine, you say?

A. I should judge about that hour.

55 JAMES G. RICE, a witness produced on behalf of the Government, and after being first duly sworn by the commissioner according to the law, testified as follows:

By Mr. SANFORD:

Q. What is your full name, Mr. Rice?

A. James G. Rice.

Q. Are you connected with the Chattanooga News?

A. Editor in chief.

Q. Were you in March, 1906?

A. Yes, sir.

Q. Have you the files of the News covering the month of March?

A. Yes, sir; I have.

Q. Will you let me see them, please?

(The witness produces certain papers.)

Q. I want to see the 19th. Mr. Rice, is that an evening or a morning paper?

A. An evening paper.

Q. Has it a large general circulation in Chattanooga and in the county?

A. Yes, sir.

Q. I will not ask you which is the larger. I did not ask Mr. Ochs.

Mr. HARMON. There was only one evening paper on that date.

By Mr. SANFORD:

Q. Mr. Rice, what time does the evening issue come out and circulate on the streets?

A. About four o'clock.

Mr. SANFORD. I desire to offer in evidence the issue of
56 March 19th, or, rather, the article in the issue of March 19th, on page 7, headed: "An appeal is allowed—Ed. Johnson will not hang to-morrow."

Mr. PRITCHARD. We object to the introduction of that article for the reasons already stated in objecting to the articles in the Times, and particularly because it would not be admissible in any event unless it were first shown, or is shown, that the defendants had read the article referred to.

The COMMISSIONER. Note the objection.

By Mr. SANFORD:

Q. Can you leave this paper with us?

A. Yes, sir.

The said article is in words and figures following, to wit:

57 "AN APPEAL IS ALLOWED.

Ed. Johnson Will Not Hang To-morrow.

"Judge Clark's Decision on Habeas Corpus Petition.

"To be Considered by United States Supreme Court.

Formal Motion for Appeal Today—The Higher Court Will Deal Only With Questions as to Whether Constitutional Rights Have Been Violated.

"The gallows in the Hamilton County jail has again been disappointed in the case of Ed. Johnson, convicted by the state courts of rape and sentenced to death. The hanging will not take place to-morrow morning as scheduled. Justice John M. Harlan, of the Supreme Court of the United States, has in the following telegram addressed to Judge C. D. Clark, of the federal court, paved the way for a further hearing on the ground that the Constitution of the United States has been violated in the Johnson case. The decision of Judge C. D. Clark refusing to grant a writ of habeas corpus to Johnson is the foundation of the motion for an appeal which will be made and argued to-day at noon before the Supreme Court of the nation.

"The telegram which gives another hope to the condemned negro reads as follows:

"'WASHINGTON, D. C., *March 18.*

"'To Hon. C. D. CLARK,
United States Circuit Court Judge,
Chattanooga, Tenn.:

"'Have allowed appeal to accused in habeas corpus case of
58 Ed Johnson. Transcript will be filed to-morrow and motion also made by Johnson's counsel for formal allowance of appeal by court.

"'JOHN M. HARLAN, *Associate Justice.*'

"After the argument and motion to-day it will in all probability be two or three weeks before the opinion will be handed down by the Supreme Court, and Johnson's lease on life is therefore of an undetermined period. However, he will not be hanged to-morrow, though all preparations for the final scene have been made. The action of the associate justice of the Supreme Court acts as a stay of execution in Johnson's case, and even if the motion for an appeal is not granted it will in all probability be nearly sixty days before he could again be sentenced and the execution carried out.

"Provided the United States Supreme Court decides to overrule Judge Clark's decision the case will then be tried on its merits before the Supreme Court, and the discussion of whether or not constitu-

tional rights have been infringed upon will, if the Supreme Court decides favorably for the prisoner, cause the granting of a writ of habeas corpus for the negro, and he will be set at liberty. This being the case, a new indictment and a new trial will in all probability be gone through with.

"The appeal spoken of in Justice Harlan's letter is an appeal from the decision of Judge C. D. Clark and deals only with the question of whether or not the constitutional rights of Johnson had been infringed since his arrest. Upon this question depends the future of Johnson. The decision of the Supreme Court that Johnson had not been granted his inalienable rights under the Constitution
59 would serve to give him his liberty, while the decision that he had not would close the doors of the jail forever against him. He would then be taken to the state court and resentenced, and after a period of about thirty days he would be executed.

"JUDGE CLARK WILL PROBABLY BE UPHELD.

"In speaking of the present status of the Johnson case this morning Attorney-General Whittaker said that he had received no notice of any action being taken by Justice Harlan and that he supposed he would be notified whenever the time comes for the two sides to be heard. He expressed the opinion that the Supreme Court would uphold Judge Clark in his decision. It will be remembered that Judge Clark, before hearing the petition for a writ of habeas corpus in his court a week ago, stated that the side against which he decided would be allowed the right of appeal, and it is in conformity with this promise that the present action has been taken.

"It is said to be the general opinion among the local lawyers that the Supreme Court will take the same view of the case that Judge Clark took, namely, that no rights of Johnson's given by the Constitution had been infringed.

"JOHNSON UNMOVED.

"Johnson was told this morning by his jailer of the present status of his case. He said very little, except 'All right,' in the same tone which was so much noticed during his testimony in the trial of his case.

"Sheriff Joseph Shipp stated this morning that all arrangements had been made for carrying out the execution of Johnson and that he himself had not received any order from any authority to stay the execution. It is probable that the order will be received by him some time during this afternoon.

60 "JOINS THE CHURCH.

"Yesterday afternoon Johnson, the prisoner, was taken into the St. James Baptist Church as a member by Rev. W. B. Fleming, pastor of that church, and was baptized in the bath tub at the county

jail. Regular church services were held in the county jail and Johnson again professed that he had become a Christian in every sense of the word, forgiving all his enemies and harboring no ill feelings toward his jailers or toward the men whom he believed would be his executioners.

"A large number of negroes went to the jail yesterday and many of them heard the sermon preached by Rev. Fleming and took part in the reception of Johnson into the church."

61 Cross-examination by Mr. PRITCHARD:

Q. Mr. Rice, at that time the Evening News was the only afternoon paper or evening paper in Chattanooga, was it?

A. Well, it was not the only paper that was published in Chattanooga.

Q. The only afternoon or evening paper, was it?

A. No, sir.

Q. What other paper?

A. My understanding is that at that time the negroes were running an afternoon paper here.

Q. What was the name of it?

A. I can't tell you now to save my life.

Q. You are a newspaper man?

A. I am.

Q. Did you ever see a copy of the paper you refer to?

A. I did. I saw a copy of the paper on March 19th.

Q. Did it only appear that evening?

A. No, sir; that paper had been running occasionally for some time, is my recollection. I don't remember what the name of it was. It was not the Blade, though.

Q. Mr. Rice, was that a daily sheet?

A. That paper?

Q. Yes.

A. No; that was not a regularly established paper, Mr. Pritchard, but there was a paper that came out that afternoon. I remember that very well, and when I saw that paper I remember to have——

Q. Speak that out louder.

A. I told them when I saw a copy of that newspaper that there would be trouble in Chattanooga that night.

62 Mr. SANFORD. Who did you tell that to? I did not catch it.

Mr. PRITCHARD. I did not hear him myself.

By Mr. PRITCHARD:

Q. You say you told "them." Who do you mean?

A. Some of the boys in the office over there.

Q. Can you secure a copy of that paper?

A. I don't know whether you can or not.

Q. What was the character of that article in the paper that you refer to, that you thought would be provocative of trouble in Chattanooga?

Mr. SANFORD. I desire to note an objection to the introduction of secondary evidence as to the contents of that article without the production of the paper.

The COMMISSIONER. The stenographer will note the objection.

By Mr. PRITCHARD:

Q. What was the character of that article that you thought would provoke trouble in Chattanooga in that negro paper?

A. I remember distinctly that the article was printed on the first page of that newspaper, and in black type; for a head line it said that Ed. Johnson would not die to-morrow. Then it went on to give a dispatch, if I am not mistaken, from, maybe, Lawyer Pardon or somebody else from Washington City, that a stay had been granted in the Johnson execution, in that case, and that he would not be hung to-morrow.

Q. How long previously to the issue of that paper had there been an issue of that paper, or had you seen one?

A. I don't know. I can't tell you that. I remember to have
63 seen a copy of that paper occasionally thrown around Chattanooga here.

Q. Do you know where that paper was printed?

A. Do you mean in what place?

Q. Yes; and who printed that paper.

A. I do not.

Q. Do you know who ran it or published it?

A. Wasn't it Van Noy?

Q. I am asking you.

A. I think that was it. I think that is the negro's name.

Q. Do you know what his given name was?

A. No; I do not.

Redirect examination by Mr. SANFORD:

Q. You think the character of that article was such, in the state of mind then, as to make it probable that trouble would follow? That was your opinion when you saw that article, as I understand you?

A. That was my judgment.

Q. That would be the effect it would produce on the minds of the community?

A. The tenor of that article was such as to inflame this community.

Q. And, of course, public sentiment in the community was somewhat——

A. It was published in a flamboyant, braggadocio sort of way that attracted my attention. I thought the brass of it was the worst I had ever seen. Well, I was satisfied when I saw it that it would precipitate trouble.

64 K. That is the impression it would have made on the mind of a man familiar with the conditions, in your judgment?

A. Yes, sir.

EDWARD CHADDICK, a witness produced on behalf of the Government, and being first duly sworn according to law by the commissioner, testified as follows:

By Mr. SANFORD:

Q. Do you live in Chattanooga, Mr. Chaddick?

A. Yes, sir.

Q. What position do you occupy here?

A. Manager of the Western Union Telegraph Company.

Q. Has your company in its records a telegram that was received on March 19, 1906, from Mr. McKenney, the clerk of the United States Supreme Court, at Washington, addressed to the sheriff of Hamilton County?

A. Yes, sir.

Q. Will you produce that?

A. Yes, sir.

(The witness produces a paper.)

Mr. PRITCHARD. You do not mean the telegram. You mean a copy of the telegram?

65 Mr. SANFORD. I mean the visible evidence of the telegram at this end of the line, what they get here.

By Mr. SANFORD:

Q. What is this? Just explain what this is.

A. A copy of the telegram.

Q. Are your messages, when delivered to customers, typewritten?

A. Yes, sir.

Q. And this is a carbon copy of the typewriting?

A. This is a water copy.

Q. Do you mean by that what we call a water press copy, ordinarily?

A. Yes, sir.

Q. Was that telegram delivered?

A. Our delivery receipt shows that it was.

Q. Have you that delivery receipt?

A. Yes, sir.

Q. Will you let me have it?

A. Yes, sir.

(The witness produces a paper.)

Q. Is this the original delivery sheet of that date?

A. Yes, sir.

Q. What is the number?

A. One hundred and twenty-six.

Mr. SANFORD. I desire to offer in evidence——

Mr. PRITCHARD. That is a copy of the other?

Mr. SANFORD. This is a copy, and seems to be exactly the same.

By Mr. SANFORD:

Q. Will you read that to the stenographer, so that he can take it down?

A. Just the contents?

66 Q. The date and contents.

A. (Reading:)

"WASHINGTON, D. C., *Mch. 19th, 1906.*

"SHERIFF OF HAMILTON COUNTY, TENN.,

"*Chattanooga, Tenn.*

"Supreme Court of the United States has allowed Ed. Johnson appeal from Judge Clark's order, and directed all further proceedings stayed and custody of Johnson retained pending appeal here. See section seven hundred and sixty-six of Revised Statu's on United States.

"JAMES H. MCKENNEY,

"*Clerk Supreme Court U. S.*"

330 p.

Q. Is that "on" or "of"? Is it "on revised statutes"? I see you have it "on." That is No. 126, is it not?

A. Yes, sir.

Q. And this delivery sheet is headed 3-19-06. That is the date?

A. Yes, sir; March 19th.

Q. And number 126, and there is a signature——

Mr. PRITCHARD. Are you offering that in evidence?

Mr. SANFORD. I will; yes. I am identifying it.

By Mr. SANFORD:

Q. There is a signature opposite number 126. That appears to be the signature of J. F. Shipp.

A. Yes, sir.

Q. Do you know his signature?

A. No, sir.

Mr. PRITCHARD. I object to the statement that it appears to be the signature of J. F. Shipp. It does not appear to be anybody's signature. It is the name J. F. Shipp, and I object to the Attorney-General stating that it appears to be anybody's signature.

67 By Mr. SANFORD:

Q. I will ask you if the name J. F. Shipp is written in the space after the word "signature?"

A. In the telegrams; yes, sir.

Q. Is the word "signature" printed there?

A. Yes, sir.

Q. And is the name J. F. Shipp written there?

A. Yes, sir.

Q. You do not know his genuine signature?

A. No, sir.

Q. The time of delivery is blank, is it not?

A. Yes, sir.

Mr. SANFORD. We offer that in evidence.

Mr. PRITCHARD. We object to it because there is no proof that the defendant Shipp ever saw or signed this paper.

The COMMISSIONER. The stenographer will note the objection.

The paper referred to is in words and figures following, to wit:

68 *Form 87. The Western Union Telegraph Co.'s delivery sheet.*

3/19. 1906. (Incorporated.) Messenger No. 2.

No.	Time.	Charges.	Signature.	Time del'd.
135	3 47		Mary Head.	
134			Mrs. Prince.	4 00
126			J. F. Shipp.	
120	4 20	Pd.	S. D. McReynolds.	4 30
143	"	"	W. W. Kent.	4 25
013	"	60	Mrs. W. C. Wilkey.	4 25
151	5 20	Pd.	W. G. B———.	4 40
175	5 20	Pd.	———	4 55
176	5 20	"	Armour & Co.	5 30
				4 59

69 Cross-examination by Mr. PRITCHARD:

Q. How long have you been manager of the Western Union telegraph office in Chattanooga?

A. Since November 23, 1906.

Q. You were not there at all, then, at the time these papers you are testifying about were made?

A. No, sir.

Q. And you know nothing whatever about it personally?

A. Nothing.

Q. All you know is that you found these papers in the office?

A. Yes, sir.

Mr. PRITCHARD. Are you going to file these originals?

Mr. SANFORD. Yes, sir; I will file those and leave them in the custody of the commissioner.

By Mr. PRITCHARD:

Q. The paper you have filed is what you have termed a water copy, meaning an impression taken on tissue paper?

A. Of the original copy; yes, sir.

Q. Of the original telegram which is sent out to the sendee of the telegram.

A. Yes, sir.

Q. But it is on a piece of tissue paper, is it?

A. Yes, sir.

Q. And the sheet you have filed as part of the delivery book—is that what you call it?

A. Delivery sheet.

Q. Goes out with the messenger boys who deliver telegrams?

70 A. Yes, sir.

Q. And you only identify this by reason of its being in the form that the sheets you use are?

A. Yes, sir.

Q. You had nothing to do with the making of the paper?

A. No, sir.

Q. And you never saw it until long after the paper had been completed, did you?

A. Yes, sir.

Q. You never saw it until long after this paper had been completed and on file?

A. Yes, sir; I had not seen it.

Q. You do not know that the telegram was ever delivered at all?

A. No, sir; that was not under my jurisdiction.

Q. You personally know nothing about it?

A. No, sir.

Q. And the sheet does not pretend to show the hour of the delivery of the telegram?

A. No, sir.

Q. There is no entry on the sheet to show the delivery hour?

A. No, sir.

Q. Look and see.

A. That was due to negligence of the messenger, though.

Q. I understand; but it is not there?

A. No, sir.

71 Redirect examination by Mr. SANFORD:

Q. Have you any other record in your office that would show the hour of delivery?

A. No; the delivery sheet would be the only record.

Recross-examination by Mr. PRITCHARD:

Q. Mr. Chaddick, upon examining that tissue copy of your telegram, I see that the whole telegram on the left-hand side was not copied, some of the letters and words being left off; and on the lower left-hand corner I see the figures 320, is it?

A. 330 p.

Q. What do these figures indicate?

A. 3.30 p. m., the time received at our office.

Mr. SANFORD. Mr. Commissioner, I regret to say we are unable to examine any more witnesses this afternoon. Some of those we had expected are not here, and we have had no opportunity, with other witnesses, to learn what they know about it, and counsel know it will be consuming useless time to examine them.

The COMMISSIONER. If there is no objection, we will adjourn until to-morrow at 10 o'clock.

Mr. SANFORD. We have not sufficient deputy marshals here to summon witnesses, and we have asked to have some more sent down so that we can proceed diligently in the morning.

72 The COMMISSIONER. If it is agreeable to all gentlemen, we will adjourn until to-morrow morning at 10 o'clock.

The hearing, at 3.35 o'clock p. m., was adjourned until Wednesday, February 13th, at 10 o'clock a. m.

73 CHATTANOOGA, TENNESSEE,
February 13th, 1907.

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., commissioner; Messrs. Edward T. Sanford and James R. Penland on behalf of the United States, and the counsel representing the respective defendants.

Mr. SANFORD. Call Mr. Chivington.

JOHN L. CHIVINGTON, a witness produced on behalf of the United States, and after being duly sworn according to law by the commissioner, testified as follows:

By Mr. SANFORD:

Q. Your name is John L. Chivington?

A. Yes, sir.

Q. Do you live in Chattanooga?

A. Yes, sir.

Q. You are connected with the Chattanooga Times?

A. Yes, sir.

Q. In what capacity?

A. Reporter.

Q. How were you connected with the Times in the year 1906, especially in the month of March?

74 A. Reporter on the Times.

Q. What particular assignment did you have? Was it an assignment that brought you in connection with the court and jail work?

A. Yes, sir; I have always handled the courts and the jail.

Q. Are you familiar with the general proceedings of the Ed. Johnson matter?

A. Yes, sir; I consider myself very familiar with it.

Q. You know the night of the lynching of Ed. Johnson, March 19th?

A. Yes, sir.

Q. Mr. Chivington, at and prior to that time had there been any race feeling in the community here—any race excitement?

Mr. PRITCHARD. I object to that, if the court please, on the ground that it is not a proper subject-matter of inquiry in a judicial proceeding of any sort, particularly when the matter involves one of contempt of court.

The COMMISSIONER. Note the objection.

Q. (Continued.) I wish you would state what the condition of the feeling on that subject was, and how it affected the lawless element.

A. I can not state how general it was. There were times when there was excitement during that period. There was one mob that I remember prior to that night.

Q. When was that prior mob?

A. It was on the night of January 24th.

Q. What was the occasion of that prior mob?

A. I believe that the mob went to the jail that night to get a
75 nigger named Floyd Westfield, and perhaps another one that was named Ed. Smith.

Q. Was that mob repulsed?

A. Yes, sir.

Q. How large was that mob? Did you see it?

A. Yes, sir; I saw it. I would say if everybody around the jail was a member of that mob that it was about sixteen or eighteen hundred strong.

Q. That mob had not accomplished anything, however?

A. No, sir.

Q. Were there any deputies present at the jail that night when the mob came?

A. When the mob came there were three.

Q. Inside?

A. Yes, sir.

Q. They kept the mob back?

A. Yes, sir; they kept the mob back.

Q. Who are those three deputies?

A. There was Mr. Galloway, Mr. George Brown, and Fred Frauley. I am not sure that Mr. Galloway was there when the mob came.

Q. Was the sheriff in the city that night?

A. My recollection is that he was not.

Q. Who was the deputy in charge? Who was the chief deputy?

A. Mr. Frauley.

Q. What was the crime for which Johnson was tried?

A. The crime of rape.

Q. On a white woman?

A. Yes, sir; white woman.

Q. Was there excitement during the trial of Johnson? I
76 don't ask this for any bearing on the trial. I ask you in reference to the question about guards—whether guards had to be maintained?

Mr. PRITCHARD. What was the question?

Mr. SANFORD. I am asking him whether there was excitement during the trial and whether or not there were guards maintained. I am not asking him anything about the conduct of that trial or any matter of that sort.

A. I could not say as to the necessity. There were guards maintained.

Q. Were there any extra defensive supplies obtained for the jail during that time?

A. I have no personal knowledge about that. All I know about that is what they told me.

Q. What they told you? Did you see any extra ammunition or supplies at the jail?

A. I saw at various times during that period a large number of guns at the jail.

Q. What kind of guns?

A. I think they were Winchester rifles.

Q. During the trial of Johnson were guards maintained around the court-house?

A. Yes, sir.

Q. Then, after the trial and until Johnson was taken to Knoxville in the habeas corpus proceedings, were guards maintained at the jail—extra guards?

A. Yes, sir; I think the jail was guarded every night.

Q. Was he taken to Knoxville in the habeas corpus proceedings?

A. He was in Knoxville some time before the habeas corpus proceedings.

Q. When was he brought back to Chattanooga?

77 A. On the Sunday morning following that hearing.

Q. On the Sunday morning?

A. Yes; sir.

Q. Was that the 11th of March?

A. March 11th.

Q. March 11th. Then during that intervening week—during the succeeding week state what precautions were taken at the jail in reference to guarding Johnson. Those you know of your own knowledge. Were you around the jail at nights?

A. Yes; sir. There were guards some nights. I was not there every night. I don't know whether there were guards every night. There were guards some nights.

Q. How many nights were you there during that time?

A. I could not remember that, Mr. Sanford, the nights that I was there. It was a very common thing for me to go every night, but there were some nights I did not go.

Q. Any nights you were there during that week, what did you find the condition of the jail in reference to guards, either the regular deputies or the extra guards, as the case might be?

A. The regular deputies were on duty most of the time that week.

Q. How many of them would be there at night on duty?

A. I would usually find six or seven of them awake. If there were others there it was just hearsay.

Q. But you would see usually six or seven yourself?

A. Yes; sir.

Q. How late would they stay there, if you know? How late would you see them there?

78 A. Well, I can not remember the hours I would be around there at night. The Johnson case itself had gotten to the point where I did not go to the jail and stay all night like I had earlier in the game. I imagine midnight was as late as I saw them.

Q. You would see them up until that time?

A. Yes; sir.

Q. You do not know how much later they stayed?

A. No; sir.

Q. You do not know what it was after that time?

A. I know prior to this trial——

Q. I am talking about that week.

A. They kept them all night, because I stayed all night.

Q. Prior to this trial?

A. Yes; sir.

Q. How long were they kept there prior to his trial; all night?

Mr. PRITCHARD. I object on the ground that he has not stated it was all night. He said he never was there later than 12 o'clock.

Mr. SANFORD. Just state that over again. Mr. Pritchard did not hear you.

A. There were some times after the Westfield mob that there were guards kept at the jail all night.

By Mr. PRITCHARD:

Q. That was January 24th?

A. That was prior to the trial of Ed. Johnson.

By Mr. SANFORD:

Q. You stayed there yourself, as I understand it?

A. Yes, sir; I stayed around the jail all night, practically, during that period.

Q. When was that period that you stayed there practically all the time and the guards stayed there all night?

79 A. It was dating from the night of the Westfield mob until the excitement allayed to an extent. I presume ten days.

Q. Ten days immediately preceding that mob?

A. Yes, sir.

Q. Did you fix the date of that Westfield mob, as you call it?

A. Yes, sir; that was January 24th.

Q. Were you there at the jail Sunday night immediately preceding the lynching of Johnson?

A. No, sir; I was not. I was busy on other things Sunday night. I was not at the jail.

Q. What effect did the habeas corpus proceedings, and especially the notice that there had been an appeal prayed to the Supreme Court, have in reference to this feeling that you have testified about?

Mr. PRITCHARD. I object to his stating generally what the effect might be upon this feeling. Let the witness state facts so we can draw our inferences, and not let him lump and characterize.

The COMMISSIONER. Note the objection.

Q. And if you answer, state how you know that and why you reached that conclusion.

A. I would not attempt to say what the general state of feeling was. There were hot-headed people who made hot-headed remarks, but the conservative element was then, as it is now, taking a calm view of things.

Q. What was the effect on the hot-headed element—the lawless element—of the appeal to the Supreme Court?

A. I believe that the general feeling in Chattanooga was one a great deal more of disappointment than of excitement.

Q. I was not asking about the general feeling. I was asking about that of the lawless element, if you came in contact with them in your rounds as a reporter?

A. I expect I have heard people, Mr. Sanford, say things
80 that indicated that they might do something. I could not say now who, to save my life.

Q. You can not specify who it was?

A. No, sir.

Q. Was that the general impression produced on you, that there was danger?

A. Well, I would say that there was some.

Q. Now, Mr. Chivington, coming to the night of this occurrence. Did you visit the jail that night?

A. Yes, sir.

Q. How did you happen to go there?

A. I heard that there was a mob at the jail. It was my business to be there and I went.

Q. You went there as a reporter for the Times?

A. Yes, sir.

Q. In that capacity?

A. Yes, sir; I went without any instructions. I just went.

Q. What time did you go, Mr. Chivington?

A. I would put it somewhere between half past eight and nine o'clock.

Q. What did you find when you got there?

A. The first thing I saw was five or six persons standing at the front gate. I also saw, as I turned into the jail, that there was a number of people in the lobby of the jail. It would be hard to tell how many. Twenty, I presume. Maybe less.

Q. Did you see those people in the lobby before you got into the jail?

A. Yes, sir; I saw them. I was looking for them and I saw them.

Q. They were plainly perceptible—plainly visible?

A. Yes, sir.

Q. Was there a light in there?

A. Yes, sir.

Q. Did you see Sheriff Shipp?

A. I met Sheriff Shipp or rather he passed in front of me
81 as I got to the jail.

Q. Passed in front of you?

A. Passed right along in front of me.

Q. Did he speak to anybody going in?

A. Yes, sir; he spoke to some men that were standing at the front gate.

Q. At the front gate?

A. Yes, sir.

Q. Do you know what was said?

A. No, sir; I do not know what he said. I noticed that he spoke, but did not stop.

Q. He did not stop—he went right on in?

A. Yes, sir.

Q. Was there any one with him?

A. No, sir; not that I remember of.

Q. Any deputy sheriffs with him?

A. Not that I remember of.

Q. Any policemen with him?

A. No, sir.

Q. Had the alarm bell rung at the court-house?

A. No, sir; not that night.

Q. Did it ring at all that night?

A. No, sir.

Q. Is there a telephone in the sheriff's residence—and was there at that time?

A. Yes, sir; I think I can say certainly that there was a telephone there.

Q. Is there a telephone, and was there a telephone at that time, communicating with the police department and the sheriff's office? I mean, were they both on the general system of telephones?

82 A. Yes, sir.

Q. Is there a telephone in the police headquarters?

A. Yes, sir.

Q. There were no policemen with him?

A. No, sir.

Q. Did he go on in ahead of you?

A. Yes, sir; he went in ahead of me.

Q. Did he summon any posse as he went in?

A. Not that I heard.

Q. Did he summon you in any way?

A. No, sir; I don't know that Sheriff Shipp saw me at all.

Q. You did not see him summon any posse? He did not stop to summon these five or six men at the gate?

A. No, sir; he rushed in where he saw some people that were masked, and he rushed towards them immediately.

Q. They were the men in the lobby?

A. No, sir; I don't think there was but one masked man outside of the jail proper. I don't think that Sheriff Shipp saw him. He was in the other room. He had one of those Winchester guns.

Q. What had become of the other Winchester guns, if you saw them?

A. Well, a few minutes later I went in to see what had become of them, as one of the details of the story, and I found the case containing the guns had been broken open and the guns had been taken out and the loads pulled, and there were some of them put back in the case and some were standing against the wall.

Q. They were all empty?

A. Yes, sir.

83 Q. Where had those Winchester guns been left, Mr. Chivington? Where was that case?

A. That was in the chief deputy's office.

Q. Was that in the part of the jail that is barred; in the inner part of the outer part?

A. The outer part.

Q. Outside of the regular jail locks?

A. Yes, sir.

Q. In a glass case?

A. Yes, sir.

Q. Now, what did Sheriff Shipp do when he went in? Just state in your own words.

A. I heard Sheriff Shipp say to the fellows he saw at the foot of the stairway something like "What is going on here?" or something of that sort, in his ordinary tone of voice, which is a little bit gruff, and some man said back to him that they were there after that nigger, I think he said, and that they were not going to hurt him, and said it in a severe way. At the same time I imagined I saw the sheriff like he was going to draw a pistol, but before he could move any farther there were five or six fellows grabbed him and carried him bodily to the top of the stairs.

Q. Did he actually draw any pistol?

A. No, sir; I did not see it.

Mr. SANFORD. I desire to note an exception to the witness' statement that he thought he was going to draw a pistol.

The COMMISSIONER. Note the objection.

Mr. SANFORD. It is incompetent.

Q. Did any of those men who caught hold of him draw a pistol?

A. No, sir; I did not see but one pistol in the jail.

Q. Was that pistol in evidence at this time?

84 A. No, sir; one of the members of the mob exhibited it to me when I got upstairs and told me where he got it.

Q. That was later?

A. Yes, sir.

Q. Was that man with the Winchester present?

A. No, sir; he was out in the chief deputy's office, just east of the lobby.

Q. It was then the four or five men who, as far as you saw, had no arms and who took hold of the sheriff?

A. I did not see any arms drawn.

Q. I say as far as you saw?

A. Yes, sir.

Q. You only saw one pistol there that whole night?

A. Inside of the jail; yes, sir.

Q. Inside of the jail. And one Winchester that one man had beside the empty Winchesters?

A. Yes, sir.

Q. You went on inside then?

A. Yes, sir; I followed right up behind the sheriff, up the stairway, and when we reached the top we found the crowd trying to open the door with a key.

Q. When the sheriff was seized and taken hold of did he call on anybody as a posse to aid him?

A. No, sir.

Q. Did you hear the sheriff then call on anybody to aid him?

Mr. PRITCHARD. Do you think he would call on a mob who were lynching a negro to help him?

Mr. SANFORD. Mr. Chivington was there. We will leave that for argument.

A. He didn't call on me. I think I was the only outsider.

Q. You went upstairs, as I understand it?

A. Yes, sir.

85 Q. What did you find up there?

A. I found about eleven or twelve men at work on the door—what they call the circle leading into the corridor where Johnson was supposed to be.

Q. Was that on the third floor?

A. Yes, sir.

Q. Were there any of the deputies there that night, that you saw?

A. Yes, sir; there was Mr. Gibson.

Q. Were any of the deputies that had been there on the former night and repulsed the mob there on this night?

A. No, sir; I did not see them.

Q. Was Brown or Frauley or Galloway there?

A. None of those three were there while I was there.

Q. Were there any deputies on guard at the jail that night besides Mr. Gibson?

A. No, sir; I think not.

Q. Did any of the deputies put in an appearance at the jail that night during the presence of the mob and before Johnson was taken away?

A. Yes, sir; Frank Jones came up there.

Q. Frank Jones. I will ask you about him later. Don't forget that. Well, you might as well tell about Frank Jones now, because I might forget it.

A. I had occasion to go back to the Times office, and as I went out I met Frank Jones coming up with a negro prisoner, and somebody at the front gate said something to him about he had better not go in there with that nigger, and when I met him I said, "Frank, where are you going with your nigger?" He said, "I arrested him down in South Chattanooga;" and he proceeded to give me the details as though I wanted it for an item for publication. I

86 said, "There is a mob in there after Ed Johnson and they are liable to hang your nigger." He took a look inside of the jail and saw the crowd and he said, "Well, I will take my prisoner and go to the police station," and I walked along near him until I got to the Times Building, and he went on to the police station.

Q. I want to ask you a question, in fairness to Mr. Jones. Did his conduct there indicate surprise at finding a mob there?

Mr. PRITCHARD. I object to that.

Mr. SANFORD. All right. The answer would have been in favor of Mr. Jones.

Mr. PRITCHARD. I want to state the grounds of the objection. I object on the ground that the record ought not to be encumbered with such statements.

Mr. SANFORD. Well, I will withdraw the question. It was as a matter of justice to Mr. Jones that I asked the question.

Q. Now, proceed with the occurrences inside the jail.

A. The mob, when we arrived there, was trying to get in with a key. The proceedings relative to that key I know not, except by hearsay.

Q. Did any of the mob tell you then?

A. Yes, sir; they told me where they got the key.

Q. Where did they tell you they got it?

Mr. CLIFT. We object to that on the ground that it is what the mob told him, and unless some of these officers, the defendants, were present the conversation between him and some of the mob would not be evidence.

The COMMISSIONER. Note the objection.

By Mr. SANFORD:

Q. Now, proceed, please, Mr. Chivington.

A. They told me that they took the key forcibly from Mr. Gibson.

87 Q. What aged man is Mr. Gibson?

A. I do not know. I do not like to speak of a man's age. They are sensitive about it when they get as old as Mr. Gibson.

Q. You think he is old enough to be a sensitive gentleman. Is that your idea?

A. Yes, sir.

Q. You need not say anything further, then. Is he a man of vigorous body who could, single handed, protect a prisoner from a mob?

A. No, sir; he could not protect a prisoner from a mob like that.

Q. Did you see Mr. Gibson there that night?

A. Yes, sir.

Q. Where was he?

A. He was inside of the—I think they call it the hospital cell.

Q. Now, Mr. Chivington, how was the mob trying to get through this circle door? Just tell us what they were doing.

A. After I got there there was one lick hit on the lock with some kind of a hammer, and then they went to work and tried to open it with that key. It was on a bunch of keys and they were trying one particular key, but it would not go in the keyhole. They began to complain that Mr. Gibson had misinformed them as to the key, and seemed to get discouraged that they would ever get in with the

key, and some fellow said something about dynamite, and some other fellow said something about a cold chisel, and they proceeded to get in with a cold chisel, which happened to be an ax this time.

Q. How did they use that ax?

A. One man would hold the ax and the other fellow would hit with a sledge on it.

88 Q. A sledge hammer?

A. Yes, sir.

Q. Were these men masked?

A. Yes, sir; they were masked.

Q. In what way?

A. They had handkerchiefs of various color tied over their faces, the handkerchiefs catching across the nose and tied over the ears.

Q. Did any particular man seem to wield this sledge hammer any more than the others?

A. I saw one man that could hit very vigorous blows with that sledge hammer.

Q. Did you recognize him?

A. No, sir.

Q. Do you know who he was?

A. No, sir.

Q. Describe his appearance.

A. He was a big man. That is about all I could say. I don't know how he looked like in the face. He was a large heavy man.

Q. Did he wield the sledge hammer as one accustomed to wielding heavy implements.

A. Yes, sir; he hit the licks at arm's length.

Q. In a skilful way?

A. Yes, sir; very accurately.

Q. How long did it take to break down these locks?

A. I think it took fully an hour to cut those steel bolts.

Q. Fully an hour?

A. Yes, sir; fully an hour.

Q. Where was Sheriff Shipp in the meantime?

89 A. When the sheriff was first taken up he was forced into a little room—I think it was a bathroom, perhaps—at the head of the stairway, and afterwards the crowd relayed on the door and he came out, but two and three and four men would stand around there and they kept him in captivity back in the corner while the thing went on.

Q. Did they have their hands on him?

A. No, sir; not that I noticed.

Q. Did they have pistols drawn on him?

A. No, sir; no pistols in sight.

Q. Did he make any effort to get away?

A. No, sir; he at various times tried to persuade the mob to leave, telling them that they must not get in there.

Q. Did he do anything besides persuasion?

A. No, sir.

Q. And soft words had no effect?

A. Soft words did not have any more effect, I imagine, than one man's force would have had.

Q. If he had that pistol in his hip pocket, did he draw that pistol on them—attempt that persuasive influence?

A. No, sir; I didn't see him draw any pistol.

Q. Did you see him attempt to escape and to get out and call for help in any way?

A. No, sir.

Q. And it took about an hour?

A. I judge it took an hour to cut those bolts. They worked there for some little time before they began that process. I think it took just about an hour to cut the bolts.

Q. They finally broke the door?

90 A. Yes, sir.

Q. Do you remember whether there were any chains on that circle door? When the lock was broken, did the door open, or were there any chains that had to be then broken?

A. I don't know anything about any claims there. I think the circle turned in the ordinary way.

Q. You do not know anything about any chains?

A. No, sir; I didn't see nor hear of any.

Q. What did they then do?

A. They opened the door. The circle swung around and two men went in.

Q. Did they seem to know where to go? What was said when that door was broken?

A. I think there was something said by either the sheriff or Mr. Gibson protesting against any further destruction of the county property, telling them that if they were determined to get the nigger he was the only prisoner on that floor and that he was in a certain cell, and that they must not be breaking up all the county property in order to find that nigger.

Q. And designating his cell?

A. Yes, sir; I think so.

Q. Can you remember which that was, Mr. Gibson or the sheriff?

A. No, sir; I don't remember which it was, but I think it was the sheriff who said that. He was protesting against the destruction of the property.

Q. And so they went to Johnson's cell?

A. They went to Johnson's cell.

Q. And got him?

A. That is, I presume they did.

Q. Was that locked?

91 A. I don't know whether it was or not. I was not inside.

Q. Did you follow them in?

A. No, sir.

Q. Who went in Johnson's cell? Who went in that way?

A. There were two men went in. One of them was masked, and one of them was not a member of the mob at all. One of them was not masked.

Q. A man who was there, but not a member of the mob?

A. Not a member of the mob.

Q. Did he go in with them?

A. Yes, sir; he went inside.

Q. Who was that?

A. That was Dr. Sutton.

Q. Of this city?

A. Yes, sir.

Q. He went in with these masked men?

A. Yes, sir.

Q. And then did they bring out Johnson?

A. Yes, sir.

Q. The masked men brought him out?

A. Yes, sir; the masked man had him tied around the arms with a rope.

Q. Do you know who tied him?

A. No, sir; I do not.

Q. Did he have hold of him by himself?

A. Yes, sir; he had him by the coat and by that rope when he came out through the door, and then the whole crowd grabbed him.

Q. About what time was that, to your best judgment?

92 A. I would say that it was ten or fifteen minutes after 10 o'clock.

A. They took the nigger and left the jail and went to the county bridge.

Q. Did you follow them?

A. Yes, sir.

Q. What became of the sheriff?

A. I don't know. That is the last time I saw Captain Shipp that night.

Q. Where did you see him last? Where was he?

A. I don't know. I got interested in watching them take that nigger away, and I don't know where I did see him last. The last time I saw him he was standing there on the upper platform about where the mob was first.

Q. You did not see him locked up again?

A. No, sir; if he was locked up again, I didn't know it.

Q. When the mob left did the sheriff then gather a posse and go after the mob to release the negro?

A. No, sir; not that I know of. I never heard of it.

Q. Was there any interference made with the mob on their way to the place of the lynching?

A. No, sir.

Q. How far was it from the jail to the place where he was lynched?

A. About six blocks.

Q. How long did it take to go?

A. About ten minutes, I expect.

Q. Now, Mr. Chivington, were there any bystanders around on the outside of the jail when you went out?

A. A few—very few.

93 Q. Did any of them follow along?

A. I think they all went, and others joined as they went along.

Q. Did you see any attempt made by the sheriff to gather a posse from that following lot of bystanders to release that prisoner?

A. So far as I know the sheriff was not near them. I didn't see him.

Q. He made no efforts, so far as you know?

A. I didn't see him at all.

Q. When they got to the bridge, tell about the lynching.

A. On the way to the bridge they stopped twice. I was walking all the time back of the crowd with Dr. Sutton, and we would step up and hear what the nigger would say. He talked two or three times, and part of the time the crowd went pretty fast. When we reached the bridge, they went about fifty or sixty feet past an arc light and came to a place that seemed to suit them, and they took the rope away from around the nigger's body and tied one end of it around his neck and threw the other end up over the top beam. Then some member of the mob told him that the thing was all over, and he might just as well talk and tell the truth, because——

Q. I do not ask for his statements. The question of his guilt or innocence is not a matter I am investigating.

A. They swung him up. The first time it was unsuccessful and the second time it was successful. That is, the second time he hung long enough to get shot while he was in the air.

Q. He was killed by shooting, was he, rather than by hanging?

A. I——

94 Q. You can not tell?

A. I can't tell.

Q. He was killed, anyhow?

A. Yes, sir; he was killed.

Q. Did you recognize then any of the mob at that place or on the way?

A. No members of the mob; no, sir.

Q. Can you describe the men? Was there anything about the appearance of the men who had him in hand on their way out to the bridge so that they could be identified, to your recollection?

A. No, sir; I couldn't identify a single man by anything I saw or heard. I heard one member called by his first name by Ed. Johnson, but I didn't even remember what that first name was.

Q. What did the man say?

A. He just remarked back to Ed.—he was surprised that he seemed to know him. That is all.

Q. Do you remember what Ed. Johnson said to him?

A. He merely called him by his first name.

Q. Do you remember what that name was?

A. No, sir; I don't remember the name.

Q. Do you remember the description of the man who had him and swung him up finally—what sort of a looking man he was, his size, the color of his hair, etc.?

A. No, sir; I don't. Which man? I think they all took a hand in that swinging up.

Q. Did this big fellow keep on? Was he active all the way through, or not?

A. Yes, sir; I think he stayed right with them.

Q. What was the color of his hair, if you remember?

95 A. I wouldn't risk my memory on that.

Q. Do you know Deputy Brown?

A. Very well; yes, sir.

Q. Is he the day jailer? I mean was he at that time?

A. He was day jailer.

Q. Whereabouts does his family live regularly?

A. I think they live part of the time up in the second floor of the jail.

Q. Do you know where they went that day? Do you know whether they were there that day, or whether they left that afternoon?

A. I don't know; except what I heard afterwards.

Q. That would be hearsay. You do not know of your own knowledge?

A. No, sir.

Q. Did you see Mr. Brown there that night?

A. No, sir.

Q. What bystanders did you recognize on the way? I mean, now, not the men who were in the lynching, but just bystanders?

A. Oh, I saw lots of them. I saw George David. I saw Alf Baselton. I think I saw Mr. Flournoy. I saw him some place between the bridge and the city. I expect if I would try to think them up I could name forty or fifty I saw that I knew.

Q. Those are law-abiding men and citizens of the town?

A. Yes, sir.

Q. Are they men of a character who would respond to a sheriff's summons and protect the laws? Are they men of that character, the men you saw there?

A. They are men of good character; yes, sir.

96 Q. What other prisoners were on that third floor?

A. I don't know personally.

Q. Did you see anybody else?

A. I was not inside.

Q. Do you know how many were in jail at that time?

A. No, sir; I do not know the number that was in jail, but there is always a lot of prisoners in jail.

Q. Always a good many?

A. Very seldom less than fifty.

Q. Were there other negroes in jail at that time?

A. Yes, sir; usually four out of every five are negroes.

Q. Do you remember the names of the negroes that were in jail at that time? Was this man Westfield in jail?

A. I don't know whether he was here or not. He was in jail some place.

Q. Do you remember any that were?

A. This negro Ed. Smith was in jail somewhere, but whether he was here or not I don't know. As far as the minor prisoners were concerned I don't remember.

Q. Do you remember whether they were on the third floor that night or not?

A. I do not know.

Q. Did you see any of them on the third floor?

A. I did not see any prisoner on any floor that night.

Q. I will ask you this: When the telegram of the court's order came on the afternoon of March 19th, the action of the Supreme Court, was anything done about it at the Times office in a public way?

97 A. Yes, sir; we posted a bulletin.

Q. You posted a bulletin?

A. Yes, sir.

Q. To the effect that the Supreme Court had entertained the appeal and had ordered a stay of execution?

A. Yes, sir.

Q. Where was that posted?

A. That was posted at the usual place at the Georgia avenue window of the counting room on the first floor.

Q. Is that a prominent place in the city?

A. Yes, sir; it usually attracts quite a crowd.

Q. Do you remember how it was that afternoon?

A. No, sir; I wasn't there. I telephoned it from the court-house, and the bulletin was put up.

Cross-examination by Mr. PRITCHARD:

Q. How far is the Times office from the jail?

A. Two blocks, nearly.

Q. And the posting of the bulletin, if it attracted any attention at all, did not attract your attention or notice?

A. No, sir; I did not see any crowd around the bulletin.

Q. You saw no crowd around the bulletin?

A. No, sir.

Q. When did you go to the Times office that evening?

A. At five o'clock. I presume I did. That was my custom.

Q. Was there any crowd around the bulletin when you did go to the Times office about five o'clock?

98 A. No, sir; I don't remember seeing any crowd around there.

Q. When election returns or anything that attracts any public interest or public excitement are posted, crowds gather there, do they?

A. Oh, yes, sir; I have seen some very large crowds in front of that bulletin.

Q. There was no crowd on this occasion?

A. No, sir.

Q. You spoke of the attempt to lynch Westfield. That was January 24th, I believe you stated?

A. Yes, sir.

Q. After Johnson had been incarcerated, had any further attempts been made at lynching?

A. Yes, sir; there was one other night that the officers thought there was going to be a mob, and they took steps to disperse it.

Q. Who was in jail then? Was Johnson there?

A. I don't think he was.

Q. Do you know whether or not it was commonly believed that he was there?

A. No, sir; I think the publication had been made that Johnson was not there.

Mr. SANFORD. I wish to note an objection to that on the part of the Government.

The COMMISSIONER. Note the objection.

By Mr. PRITCHARD:

Q. Do you know whether or not the public thought that the
99 publication was a ruse on the part of the sheriff to prevent a mob or whether or not the mob had assembled for the purpose of lynching Johnson?

Mr. SANFORD. I wish to note an objection to that on the part of the Government on the ground that it is incompetent.

The COMMISSIONER. Note the objection.

A. There are some things I know about that ruse proposition. There were days when the papers in the morning and in the afternoon would print that various prisoners in danger of being lynched had been spirited away, and people would commonly say around on the street "That is just a ruse, and the prisoner had not been removed at all." I have heard that remark a number of times.

Q. At the time of the 24th of January mob Westfield was confined in jail on a charge of murder, was he not, of an officer who was engaged in executing a process? Was not that the charge against Westfield?

A. Yes, sir; accused of shooting a constable out in the country.

Q. Ed. Smith was incarcerated in jail on the charge of attempt to rape a child in the orphans' home, was he not?

A. Yes, sir.

Q. How many negroes or negro prisoners under charge of felonies or the like are usually confined in that jail?

A. There are always negroes in jail.

Q. I will ask you if there are not from fifty to seventy-five negroes confined in that jail charged with felony or some minor offence?

A. Yes, sir; about 50 negroes all the time.

Q. And how many white people are usually confined there?

100 A. My information is that it runs along from ten to twenty or twenty-five white people.

Q. The jail is how many stories high, including the lower basement story?

A. Three, I believe.

Q. Is it not four?

A. Well, there are four, including that basement.

Q. Johnson was confined on the second floor above the ground, was he not?

A. Yes, sir; I think so. I am not familiar with the whole interior of that jail. I know I just had to go up one stairway.

Q. That reached the top floor of the jail?

A. Yes, sir.

Q. The place of confinement?

A. Yes, sir.

Q. The Attorney-General asked you about the people you saw there that night, excluding them and calling them bystanders or lookers-on, as differentiated from the mob. Do you know whether they were mere bystanders or lookers-on, or whether they were aiding and abetting personally and willing to lend their assistance, or how that was?

A. No, sir; I don't know. I do not know whether they were in sympathy with the mob or not.

Q. You can not tell whether they were armed and ready to assist the mob or not?

A. No, sir; I had no way of telling.

Q. The mob, as the Attorney-General called them, did not exhibit their pistols to you and say, "We are armed," or show you their pistols?

A. No, sir.

101 Q. Neither did the men on the outside, whom the Attorney-General has dignified as bystanders, show you theirs?

A. No, sir.

Q. As far as you know the one crowd is as likely to have had pistols as the other?

A. Yes, sir; as far as I know.

Q. And the gentlemen of good character he refers to, he asked you the question whether or not they would respond to the sheriff's summons to assist him in dispersing the mob. What was your answer to that?

A. I said there were gentlemen of good character there. I don't know whether they would have responded or not.

Q. You do not know whether they would have responded or not?

A. No, sir.

Q. You recognized, however, a number of the people who have been termed bystanders?

A. Yes, sir; I recognized some.

Q. Now, you say that there were some ten or a dozen people engaged in breaking the entrance to the apartment in which Johnson was confined?

A. Yes, sir.

Q. Was that as many as could get in there to do that work conveniently?

A. Yes, sir; there were in there even then more than could work.

Q. More than necessary?

A. Yes, sir.

Q. They were in one another's way to a certain extent?

A. Yes, sir.

Q. How many bolts did they have to break or cut to get in?

A. I knew once, but I have forgotten. I think they have about seven.

102 Q. When those bolts are cut they get to a circular gate, do they?

A. These bolts fastened the lock on that kept that circle from moving.

Q. And then when the bolts are cut the circle is turned around so that entrance can be had to the cells?

A. Yes, sir.

Q. And the remark you referred to which you supposed to have been made by the sheriff was when they were engaged in a promiscuous destruction of property—tearing the cells open?

A. Yes, sir; tearing that door down.

Q. And would the tearing of other doors down have released a number of other prisoners?

A. I don't know about that. There were separate cells, but I don't know who was in them.

Q. This man Smith, the alleged rapist, and this man Westfield, the alleged murderer, were there?

A. They were in jail some place. Whether they were there that night, I don't know.

Q. When the mob had secured Johnson, the prisoner, they went out upon the street, and that street is Walnut street, and leads directly to the Tennessee River Bridge, does it?

A. Yes, sir.

Q. The bridge being at the foot of Walnut street?

A. Yes, sir.

Q. And that is six blocks away?

A. Yes, sir; I presume it is six blocks.

Q. Where was this first pause you spoke of?

A. I think they stopped up on that sidehill, just north of Sixth street.

Q. There is quite a considerable hill on the north of Sixth street?

A. Yes, sir.

103 Q. (Continued.) And between 5th and 6th, is there?

A. Yes, sir; a steep hill.

Q. Then you descend the hill, and from there to the river is practically on a level with the bridge, is it?

A. Yes, sir.

Q. At the south end of the bridge towards the jail I will ask you whether or not there is an archway of lights over the bridge?

A. Yes, sir.

Q. Incandescent lights?

A. Yes, sir; there is.

Q. Then from the overhead beams of the bridge are suspended arc lights?

A. Yes, sir.

Q. Was this lynching done under one of those arc lights—immediately under the arc light?

A. No, sir; not immediately under the arc light. It was a little beyond the light.

Q. A little beyond?

A. A little beyond.

Q. Was it light there? Was there a bright light there where the lynching took place?

A. Yes, sir; it was pretty light.

Q. I will ask you whether when the mob got to the bridge they deployed a squad to hold the end of the bridge? Do you know how that is?

A. I don't know how that is. That escaped me if that took place. I did not see it.

Q. Do you know whether the end of the bridge during that mob was guarded by six or a dozen men?

A. Yes, sir. I do not know personally. I found out afterwards that it was.

Mr. SANFORD. I desire to note an exception on the part of the Government to the statement of the witness on the ground that it is hearsay.

104 The COMMISSIONER. Note the objection.

By Mr. PRITCHARD:

Q. Well, how many of the persons, whether bystanders or mobists, helped to kill the negro? How many were there engaged in the actual murder of this man?

A. There were, I presume, a dozen who swung the nigger up. The fusillade of pistol shots came from the rear.

Q. Well, go ahead.

A. Came from in the rear of the mob.

Q. But when the man was hung there was something like a dozen men immediately around him that were engaged in the hanging?

A. Yes, sir.

Q. I will ask you if the rope broke the first time?

A. It slipped; yes, sir.

Q. He was not then fired upon?

A. No, sir.

Q. Now, then, these same men who were engaged in the attempt to hang him, which failed, immediately undertook to hang him again?

A. Yes, sir.

Q. When he was suspended in the air, what occurred?

A. Somebody shot him.

Q. Where from?

A. From the rear of the mob.

Q. Was it the mob that shot him or some of these bystanders that you have referred to?

A. It was people further toward the south end of the bridge.

Q. From among the bystanders, as you observed at the time?

A. Yes, sir; I presume it was from among the bystanders.

Q. How many shots were fired altogether?

A. That is impossible to guess.

Q. Were there a hundred?

105 A. I should say several hundred.

Q. Were there not as many as five hundred shots fired?

A. I could not say that. It was very rapid firing.

Q. How long did the firing continue?

A. It continued until the rope broke and the negro fell.

Q. While this immense fusillade was going on, and until after the negro had been killed, had a shot been fired by these men that you call the mob?

A. No, sir; not a shot.

Q. The man was killed by the shooting from these gentlemen Mr. Sanford has referred to, was he?

A. Yes, sir; that is the fact.

Q. And the gentlemen that Mr. Sanford referred to as being the ones that Sheriff Shipp ought to have called upon to help him?

A. I don't know about that.

Q. Now, coming back a little again. When Sheriff Shipp came to the jail he was alone?

A. Yes, sir.

Q. Did he move rapidly forward?

A. He was running when I saw him.

Q. He was running. How did he get through the crowd? Did he push himself through, or how did he get through?

A. He shoved the men aside.

Q. Shoved them back and entered?

A. Yes, sir.

Q. Did he go at once forward?

A. Yes, sir; he never stopped.

Q. As rapidly as possible. As rapidly as he could get through the crowd?

106 A. He never stopped until he got to that inside door.

Q. Did he go immediately upstairs where the noise was, or how did he get upstairs?

A. No, sir; they carried him upstairs.

Q. How did they do it? How many men seized him?

A. Four or five.

Q. What did he say to the mob? Did he ask them to disperse?

A. Yes, sir; he asked them several times to disperse.

Q. What did he say to dissuade them from their purpose?

A. I don't remember his language. He appealed to them on the ground that the negro—I don't remember what he said about the negro, but he appealed especially on the ground of county property. He appealed to them not to destroy county property—that they must not do it.

Q. That was while they were engaged in breaking the bolts?

A. Yes, sir.

Q. Did he appeal to them not to mob the negro and to disperse?

A. Yes, sir; he did. He appealed to them not to mob the negro.

Q. What was the manner of the mob? State whether or not the mob was a resolute and determined mob, and what circumstances or indications would make you believe so.

A. The mob was absolutely silent, except when it would come to the matter of directing how something should be done, and one man did most of the talking.

Q. One man did the talking. Did they seem to obey his orders?

A. Yes, sir; he sent two men after that axe and they went right away.

107 Q. Do you know where they got the axe?

A. No, sir; I do not.

Q. Was there any yelling, screaming, noise, cursing, or anything of that sort going on?

A. There wasn't any noise made by the mob except what they made in breaking down the door. It was perfectly quiet except the blows they struck.

Q. It was perfectly quiet except the blows they struck?

A. Yes, sir.

Q. Now, you spoke of Jerry Gibson. Do you know how long he has been in charge of that jail there?

A. He has been in that jail ever since I have been in Chattanooga. That was then a little over a year.

Q. Did you ever hear of an escape from that jail or a man being mobbed there? I mean while he was in charge there during Sheriff Shipp's administration.

A. No, sir; I never did.

Q. Then you were asked about his age. About how old would you say he was?

A. I would say that Mr. Gibson is about fifty-five.

Q. About how old a man is Sheriff Shipp?

A. Sheriff Shipp—I am a little afraid to say—he is about fifty-eight.

Q. Sheriff Shipp wants to thank you. Now, you used the language in answer to a question from the attorney-general that you imagined that the sheriff was about to draw a weapon, and he objected to it.

I will ask you to state what in his manner or his actions indicated to you that he was about to draw that?

A. That occurred right at the door—at the foot of the stairway. One of the mob said to him that they were there to get Ed.
108 Johnson, and that they were going to get Ed. Johnson. He did not say it very mildly, and they were not there to hurt him, and they were not going to hurt him—hurt the sheriff. The sheriff said, "Yes, I know you are not going to hurt me." He said that in rather a determined tone, and as he did it he moved his hand towards his hip, and I drew the conclusion from that that he was about to draw a weapon, when was seized by the mob.

Q. He was immediately seized, was he?

A. Yes, sir.

Q. Where does Sheriff Shipp live and where did he live at that time?

A. I believe Sheriff Shipp then lived over on Georgia avenue, three or four blocks from the jail. I am not sure about that.

Q. East of the jail or north of the jail?

A. East and north of the jail.

Q. Northeast of the jail?

A. Yes, sir.

Q. How far from the jail did you say? I did not hear it.

A. I think three or four blocks.

Q. Did he ever live in the jail?

A. No, sir.

Q. Did he occupy the jail or serve as the jailer personally?

A. No, sir; not since I have been here.

Q. Did you observe the telephone when you went in the jail, or where the telephone had been?

A. Yes, sir; I tried to use it.

Q. What did you find?

A. It was cut off.

109 Q. How?

A. Somebody had taken the telephone instrument and pulled the string loose—the connection loose.

Q. Broken the wire?

A. Yes, sir; it was pulled out so that it could not be used.

Q. So that it could not be used?

A. Yes, sir; and I was told by the man with the gun not to try to use it or try to fix it.

Q. And the case in which the arms were kept was broken?

A. Yes, sir; it was broken open.

Q. And the cartridges in the rifles had been removed?

A. Yes, sir.

Q. Were there any cartridges there?

A. There were some on the floor.

Q. Was that in the office of the jail where the guns were kept?

A. Yes, sir.

Q. How many men were there in charge of that office?

A. One man when I was there.

Q. He had one of those Winchester rifles?

A. Yes, sir; he had one of those Winchester rifles.

Q. Now, when this mob was at the jail, you say Frank Jones came with a prisoner?

A. Yes, sir.

Q. To be put into the jail?

A. Yes, sir; he told me he was bringing him there to put him in the jail.

Q. And you saw him with the prisoner?

A. Yes, sir.

110 Q. Do you know where he brought the prisoner from?

A. Yes, sir; that is, in detailing where he got the prisoner, he said the negro had cut a man in South Chattanooga and had been arrested and taken before Squire Gahagan on Montgomery avenue.

Q. On Montgomery avenue?

A. And had been committed to jail to await trial the next morning.

Q. And he arrived with his prisoner while this mob was there?

A. Yes, sir.

Q. What did he do with the prisoner?

A. I don't know where he went after he left me at the corner of 8th street, but I found out that he went to the police station where he said he was going.

Q. Montgomery avenue runs east and west and Walnut street north and south, practically?

A. Yes, sir.

Q. How far is Montgomery avenue from Walnut street and from the jail on Walnut street?

A. Montgomery avenue is 15th street and the jail is north of 7th street, and that would make it eight blocks and a half.

Q. Do you know where the prisoner was arrested? Was it beyond Montgomery avenue?

A. Oh, yes, sir; it was down in South Chattanooga somewhere. I made mention of it that night and stated where the negro was arrested. I think it was there on Sydney street somewhere.

Q. Where is that?

A. That is the blocks over there.

111 Q. Ten blocks beyond or south of Montgomery avenue?

A. Southwest.

Q. Where was Squire Gahagan's office, where the negro's trial took place?

A. That was on Montgomery avenue, about half a block east of Market street.

Q. And that negro had been arrested for stabbing some one, as you were informed by the sheriff?

A. That is my recollection.

Mr. SANFORD. I desire to note an objection to so much of this testimony as goes beyond the statement made by Mr. Jones that night.

I have no objection to the statement of what was said by him, but as to outside matters I desire to object.

The COMMISSIONER. Note the objection.

A. That is where I got all this information.

By Mr. PRITCHARD:

Q. Was Frank Jones at the time one of the sheriff's deputies, and is he one of the defendants in this case?

A. Yes, sir.

Q. In the Chattanooga Times of the 19th of March appeared an article headed "Justice Harlan allows an appeal to Ed. Johnson." Who wrote it?

A. I wrote it.

Q. What time does the Times come out?

A. The city edition comes out about 3.50 in the morning.

Q. Is it delivered around the city?

A. Yes, sir.

Q. Is it a paper of general circulation in the city?

A. Yes, sir; I would say so.

112 Q. Was it at that time the only morning paper?

A. Yes, sir.

Q. After the paper came out were you on duty that day?

A. Yes, sir; I was on duty all day.

Q. Did you go around the city in performing your reportorial duties?

A. Yes, sir.

Q. Did you mingle with the people?

A. Yes, sir; I was in the courts that day. I think the criminal court was in session. I *was* think I was in court.

Q. I will ask you whether or not the publication of this article on the morning of the 19th created any excitement?

A. No excitement that I saw or heard of.

Q. Did it arouse any mob spirit, or anything of the sort, so far as you were able to discover in your rounds?

A. No, sir; I did not hear anything about any mob all day.

Q. You had the Johnson case in charge?

A. Yes, sir.

Q. It was your business to hear and look after matters of that sort?

A. Yes, sir.

Q. And you did do it? You were giving it your attention?

A. I tried to; yes, sir.

Q. If it had created any such excitement or any such spirit it would have been your business to have ascertained it?

A. Yes, sir.

Q. Ed. Johnson was brought back from Knoxville on March 11th, I believe you said?

113 A. Yes, sir; Sunday morning.

Q. Do you know what the date of the execution was?

A. The original date was March 13th.

Q. March 13th?
A. Yes, sir.
Q. What was the last date?
A. March 20th.
Q. Had the excitement subsided after March 11th, or any demonstration of excitement?
A. There were no demonstrations after March 11th until March 19th.
Q. Until the mob of March 19th?
A. No, sir; there were not.
Q. Did you observe any demonstrations of excitement until the mob had assembled?
A. No, sir; I knew nothing of it until I was told at the city hall that it was already there.
Q. It was already there before you knew it?
A. Yes, sir.
Q. And this case had been put especially in your charge?
A. Yes, sir.
Q. And it was your business to observe and find out?
A. Yes, sir.
Q. This girl that it is alleged Johnson raped—did she live in the city of Chattanooga?
A. No, sir; she lived out near the mountain. She lived beyond St. Elmo.
Q. How far from the city is the place she lived, and the place where the rape*d* is alleged to have occurred?

Mr. SANFORD. I desire to note an objection to going into the
114 matter of that trial. It is not a question of fact involved in this case.

Mr. PRITCHARD. I am not going into that trial. I am offering that for this purpose, that it is not likely that this mob came from the city, but came from somewhere else.

Mr. SANFORD. That is simply a question of that trial. I don't want to go into that.

Mr. PRITCHARD. I don't care to go into that trial or say anything at all about it. I don't care about it.

Q. How far does she live from the Georgia line?
A. I don't know how far that is. It is not very far.
Q. About half a mile, is it not?
A. About half a mile.
Q. In that neighborhood, is it a populous settlement where she lives?
A. Yes, sir; towards the city it is populous.
Q. But towards Georgia and Mountain Junction?
A. Yes, sir; there are a great many people live out there.
Q. Do you know the people who live in that neighborhood?
A. I know some of them.
Q. I will ask you if she resided inside of a cemetery?
A. Yes, sir.

Q. And if her father was the keeper of a cemetery?
A. Yes, sir.
Q. Forest Hill Cemetery?
A. Yes, sir; Forest Hill Cemetery.
Q. Do you know her father's name?
A. Yes, sir; his name is Taylor. I have forgotten his first name.

115 Mr. SANFORD. We note an objection to this as incompetent, as having nothing to do with this case. It is going too far into that case. It is inadmissible.

The COMMISSIONER. Note the objection.

By Mr. PRITCHARD.

Q. Do you know whether or not he is a southern or northern man?

Mr. SANFORD. I desire to note an objection to that matter as entirely incompetent.

The COMMISSIONER. Note the objection.

A. He told me he was a northern man.
Q. Do you know whether or not he is an ex-federal soldier?
A. He wears a G. A. R. button, and he told me that he was a federal soldier.

Mr. SANFORD. It is understood, Mr. Commissioner, that the Government objects to all these matters as incompetent and irrelevant to the issues in this case.

The COMMISSIONER. Note the objection.

By Mr. PRITCHARD:

Q. Do you know whether or not his politics differ from those of Captain Shipp and his deputies?
A. No, sir; I am not informed on that.

Mr. PRITCHARD. I will stop now. I want to reserve the right to further cross-examine Mr. Chivington.

Mr. SANFORD. That is all right. The Government has the same right.

Mr. PRITCHARD. Yes, sir; we understand that with respect to all witnesses.

Mr. SANFORD. That will be understood.

116 Redirect examination by Mr. SANFORD:

Q. Mr. Chivington, in reference to the matter you have been asked about with regard to the apprehensions of the mob, did you have any reasons in your rounds to apprehend that if Johnson was not hung in accordance with the original order of the state court on the morning of the twentieth that there would be a mob?

A. Yes, sir; my opinion on that Monday and on that night up to the time I heard of this mob was that if the state court sentence was not executed on Tuesday morning that a mob could reasonably be expected on Tuesday night.

Q. That was the impression you gathered?
A. Yes, sir.

Q. It happened like you expected, but a little sooner?

A. It happened a little different from what I expected because it happened on Monday.

Q. A little bit sooner?

A. Yes, sir.

Q. I mean, if he was not hung he would be lynched?

A. Yes, sir; I heard people say they were anxious to see what would be done between nine and twelve o'clock on Tuesday. I heard they say that.

Q. Now, in reference to where this girl involved in that case, the victim, lives. How far is that from the jail?

A. I don't know. I expect that is three miles.

Q. Is that in the neighborhood from which a mob was to be expected if there was a mob?

A. I could not say as to that. I don't know.

Q. What section of the community was it expected to come from, or where did it come from?

A. The first mob came, according to the general information, from the 15th district, which lays over east of Missionary Ridge.

117

Q. Then the mobs do not come from the center of the city? It would not be expected from the business section of the community, but would be expected from an outlying portion of the town?

Mr. PRITCHARD. I object to where the witness would expect the mob from.

Mr. SANFORD. I understood the gentleman had gone into that matter.

Mr. PRITCHARD. I undertook to show the facts and not what the witness' expectation was. He was not expecting the mob at all.

The COMMISSIONER. Note the objection.

By Mr. SANFORD:

Q. In reference to the third floor of the jail, is that building higher in the rear than it is in the front? Is there one story that is underground in the front?

A. Yes, sir; I think the stories must be lower in the back part there.

Q. Then, what would be called the third story from the ground floor would only be the second floor from the front. Is that right?

A. The top floor in the rear is three floors from the ground, I believe, but it is the second floor in front.

Q. Now, this man who did most of the talking and who sent for the axe—is that that big fellow or not?

A. Yes, sir; he was a big man.

Q. Was that the man you spoke of who used the axe, or another? Was it the same man or another man?

A. No; I think it was another man.

118

Q. Can you describe this other man? Can you describe this other man who seemed to be the leader?

A. I can describe something about what his body looked like. I do not know what his face was like.

Q. I wish you would describe him as well as you can.

A. He was a man a little bit more than medium size and not any more than medium tall.

Q. Do you remember the color of his hair?

A. Yes, sir; he was a dark-haired man.

Q. His eyes?

A. I did not notice.

Q. Thickset or medium?

A. A little bit more than medium.

Q. What did he weigh?

A. From his looks, I guess he would weigh 165 pounds.

Q. How old a man.

A. I think he was a young man.

Q. What do you mean by that—twenty or thirty, or somewhere along there?

A. Along there some place.

Q. Did the handkerchief drop off of his face at all?

A. Yes, sir; he lost the handkerchief off of his face.

Q. Did he have a moustache?

A. No, sir.

Q. Did he have a beard?

A. No, sir.

Q. Smooth shaven?

A. Yes, sir.

Q. Twenty-five or thirty and dark beard. Did you know him?

A. No, sir; I did not know him. I had never seen him before.

119 Q. Have you ever seen him since, to your knowledge?

A. No, sir; not that I know of.

Q. Did the handkerchief drop off of this big fellow who was handling the sledge hammer?

A. I don't think it did. I am not positive about that.

Q. Could you tell whether he had a moustache or beard?

A. I think he had a heavy beard, but I don't know whether he was wearing a moustache or not.

Q. Did the handkerchiefs drop off any more of these men that you have described?

A. Yes, sir; I noticed before we got away from the bridge that a number of them had forgotten that they were masked and their handkerchiefs had fallen.

Q. They were men you did not know, as I understand, and as you have already stated?

A. Yes, sir; I did not know them.

Q. Mr. Chivington, was there any distinction between what you termed the mob and the bystanders in reference to this habit of wearing handkerchiefs?

A. Yes, sir.

Q. Did any of these gentlemen that you have named, and that you say are law-abiding citizens, have any handkerchiefs over the lower part of their faces? Were they in any disguise?

A. No, sir; none of the people I knew.

Q. That is what I mean. They did not have any handkerchiefs?

A. No, sir.

Q. These people that you have spoken of as bystanders, they were not handling the rope and hanging the prisoner, were they?

120 A. No, sir.

Q. There was a distinct line of conduct between the men you called the mob and the others, the bystanders, was there not?

A. Yes, sir; that is, I presume so. I considered myself a bystander.

Q. You considered yourself a bystander and not a member of the mob?

A. Yes, sir.

Q. And you were not masked, were you, Mr. Chivington?

A. No, sir; and I did not shoot, either.

Q. You did not pull the rope or anything of that sort?

A. No, sir.

Q. You did not participate?

A. No, sir.

Q. You did not see any one of these bystanders shoot that man, did you?

A. I don't know who shot. It was a dangerous proposition. There was a crowd of, I presume, twelve to fourteen standing right around him and I was in the bunch and thought the firing came from back of us. It looked like they did not care whether they hit the nigger or somebody else, so we scattered.

Q. You do not know who fired?

A. No, sir.

Q. It was rather exciting?

A. Yes, sir.

Q. You are not really sure who fired? You do not know?

121 A. No, sir; the only thing I know is it did not come from under the nigger where he was hanging, or I would have seen the pistol.

Q. It was not in the immediate crowd you were in?

A. No, sir; it was not in that crowd.

Re-cross examination by Mr. PRITCHARD:

Q. In other words, the way I understand you, in answer to Mr. Sanford's question, is that the disguised ruffians hanging the nigger were masked and the respectable gentlemen who shot the nigger from behind were not masked; that is the distinction?

A. No, sir.

Redirect examination by Mr. SANFORD:

Q. As I understand, you saw no respectable gentlemen fire?

A. No, sir; I did not.

Q. You did not see any of them fire, and you did not see any of them have pistols?

A. No, sir.

By Mr. PRITCHARD:

Q. There is one other matter I want to ask you about, in reference to the feeling or impression you had that if Jackson were not executed legally he would be executed by the mob. As I understand you, the substance of what you have said is that the public tension began and was so great that you felt or believed, I believe was
122 your expression, that if Johnson were not legally executed from any cause whatever and the day of execution were allowed to pass there would probably be a mob.

A. Yes, sir; I believed—in fact I think I expressed myself that I looked for a mob on Tuesday; and I heard officers of the jail admit that same thing along about that same period.

Q. Then you expected a mob the next night?

A. On Tuesday night; yes, sir.

Q. And not the night it did occur?

A. No, sir.

Q. And there was nothing in the atmosphere or in this tension you referred to to cause you to expect that the mob would occur when it did occur?

A. No, sir; I did not expect any mob on Monday night.

Mr. SANFORD. May Mr. Chivington be excused with the understanding that either side may recall him for further examination if it is so desired?

Mr. PRITCHARD. Yes, sir.

123 Mrs. ELLEN BAKER, a witness produced on behalf of the United States, having been duly sworn by the commissioner, according to law, testified as follows:

By Mr. SANFORD:

Q. Are you Mrs. Ellen Baker?

A. Yes, sir.

Q. Where do you live, Mrs. Baker?

A. Ducktown, Polk County, Tenn.

Q. Mrs. Baker, were you arrested in the early part of last year on a charge of selling whiskey without a license?

A. Yes; along in last March.

Q. Were you brought to the jail in Chattanooga?

A. Yes, sir.

Q. Were you there on March 19th?

A. I reckon.

Q. You were there?

A. Yes.

Q. What floor were you on?

A. I was on the upper floor.

Q. Was there a negro prisoner on that floor named Ed Johnson?

A. Yes, sir; that is what they called him, the folks that come up to see him.

Q. Was there a white man also a prisoner on that floor?
A. Yes, sir.
Q. Do you remember what his name was?
A. No, sir; I never did think to ax the man what his name was.
124 Q. You never asked?
A. No, sir.
Q. Did you get acquainted with this white man?
A. Yes, sir; they let me go to get the white man to do my writing.
Q. Why did you want to do writing?
A. I wanted to write to my husband.
Q. And this white man was allowed to write for you?
A. Yes, sir; the jailers said they wouldnt have time, and they said I could go over thar and get him to write for me.
Q. Were there any negro prisoners on that floor with you the day of March 19th, the day this trouble occurred?
A. Up on the upper floor?
Q. Yes.
A. No; only just that one.
Q. Ed Johnson?
A. Yes; only just that one. It was me and that darkey.
Q. That is Johnson you mean by that darkey?
A. Yes, sir; and a white man on the upper floor.
Q. You three?
A. Yes, sir.
Q. That afternoon, did you want to do writing to your husband?
A. Yes, sir; I wanted to do some writing, and they told me just when I wanted the writing done for me to go over thar and get that gentleman to write for me, and I went over thar to get him to write for me, and he warn't in his room.
Q. By that gentleman, you mean that white prisoner who was on that floor?
125 Q. Can you tell us what time that was in the afternoon?
A. It was along in the evening like.
Q. Was it before sundown that he was going to write the letter for you?
A. Yes; it was before sundown, I think.
Q. Then what did you do when you found he was not there?
A. I went back to my room.
Q. Then what did you do later? Did you tell anybody?
A. Yes, sir; I went back to my room and stopped there a while; and I got to studying I had got some letters from my husband and I ought to answer them, and I thought I would go downstairs a piece and I called the night jailer, and he said, "What did you come down here for?" I says, "I want to get some letters wrote back to my husband," and I says, "That man hain't over thar." He says, sezzee, "I think they took him out this evening." I says, "Did they take him out in bond, though?" He says, "No, I reckon not." He says, sezzee, "You hurry on and go on up back to your room," he says.

"There is a mob coming in here;" and I just went on up to my room and went to bed.

Q. Was there any mob there at that time? Was there any unusual disturbance around the jail then?

A. No; I went back up and went to bed, and I stayed in bed a while, and then the racket commenced a while, and then the crowd come to my door.

Q. At the time you first spoke to this man downstairs, who was it you first spoke to?

A. It was Mr. Gibson, the night jailer.

Q. Do you know where Mr. Brown was that day?

A. No, sir; I don't know where he was.

126 Q. Do you know what time of day he left that day?

A. No, sir; I don't know what time of day he left that day, for Mr. Brown, I hardly ever spoke to him at all.

Q. Can you tell us, as best you can, what time it was you spoke to Mr. Gibson and told him that white man was gone up there?

A. Why, hit was after dark a while.

Q. About how long?

A. I don't know how long.

Q. Was it six o'clock, or somewhere along there?

A. It might have been a little after six, or about six.

Q. Would that be your best judgment, that it was a little after six?

A. Yes; I think so. You see, I didn't have no timepiece up there, and I can't tell you how long I laid on my bed a while before I got up and went down there.

Q. He told you there was likely to be a mob?

A. Yes, sir.

Q. And that you had better go back upstairs?

A. And for me to hurry up to my room, and as I hurried on back to my room he come along after me and locked my door, and when he locked my door I went to bed. Then I was going to sleep and I heard such a racket, and it scared me so bad I jumped up.

Q. Did you say anything to him about whether you would be hurt? Were you scared or not?

A. When the mob come in?

Q. No; I mean when you heard that first conversation, did you say anything to him, or did he say anything to you about that?

127 A. Well, he said they wouldn't hurt me; for me to go on back up there and go to bed. I didn't know what he meant by saying that.

Q. Did he say anything about your protection, or anything like that?

A. No; he didn't say anything about it until after they all come up there and cut up, and he come and I was hollering, and it scared me. He said there was—another man was standing in the door, and he says "We ain't agoing to hurt you, it is that colored man we want."

Q. That was a member of the mob; that was not the jailer?

A. No; and then Mr. Gibson, he come there, too.

Q. What did he say to you?

A. Why, he told me to hush hollering, there warn't nobody gwine to hurt me.

Q. Was there anything said at any time by Mr. Gibson to you about protecting you, or anything of that sort?

A. Why, he told me they wouldn't bother me. He said I was a woman. He said they wern't allowed to bother me no way.

Q. They were not allowed?

A. No; he said they had to take care of me.

Q. Who had to take care of you?

A. He never said.

Q. He just said they had to take care of you?

A. Yes.

Q. Did you see them take that man out that night?

A. No; I never seed they take him out, I was scared so bad.

Q. There was considerable racket there, was there?

128 A. Yes; there was a powerful racket. I never heard so much.

Q. Did anybody interfere with you that night, or threaten you any way?

A. No; they come up there after the first noise passed away, Mr. Gibson and another man or two. I don't know them. I didn't know anybody at all. They asked me if I got pritty bad scared. I told them yes, and then I went and laid down in my bed and went to sleep.

Q. I mean while this was going on, did anybody threaten you in any way?

A. When that was going on there was a man poked his gun through the bar and told me to quit hollering.

Q. You were hollering, were you?

A. Yes, I did. I hollered.

Q. That is all that happened to you, is it?

A. Yes.

Q. I mean nothing else was done to you in any way?

A. No; there warn't nothing else done to me.

Cross-examination by Mr. PRITCHARD:

Q. When he poked his gun through the bar, you quit hollering, did you not?

A. Yes; it scared me. I quit hollering.

Q. Where do you live?

A. I live at Ducktown.

Q. Where is Ducktown?

A. Why, hit's Tennessee.

Q. In Polk County? In the mountains of Tennessee?

A. Yes, sir.

129 Q. It is a copper mining place, is it?

A. Yes, sir.

Q. What has been your business, selling moonshine whiskey?

A. What did you say?

Q. You have been engaged in the business of selling moonshine whiskey there?

A. Yes, sir; that is what they had charged me.

Q. That has been your occupation?

A. Yes, sir.

Q. You are a lady moonshiner, are you? Is that it?

A. Yes, sir.

Q. How far is Ducktown from here; do you know?

A. No, sir; I couldn't tell you how far it is. I have never been here but once.

Q. You were brought up here by the federal court?

A. Yes, sir.

Q. Before Judge Clark?

A. Yes, sir.

Q. And you were confined then in the Hamilton County jail, where this lynching occurred?

A. Yes, sir.

Q. Who did you first tell this story to?

A. What did you say?

Q. Who did you first tell this tale to?

A. About this lynching?

Q. Yes.

A. Why, I don't know.

Q. Tell us some fellow you did tell it to? Either the first one or the second one?

A. Well, I can't tell you.

130 Q. Who interviewed you in regard to what you were going to testify here before this court?

A. Why, there was a lawyer; I think he was.

Q. What sort of looking fellow was he?

A. He was a low, chunky man.

Q. Was he a lawyer, or a detective?

A. I don't know. He come up to Ducktown where I was.

Q. He came up to Ducktown. Was he a fat, chuck-headed fellow?

A. Yes, sir; after I went back home.

Q. Did he tell you what his name was?

A. Yes, sir; he told me, but I forgot it.

Q. Was it Dickey?

A. I don't know what his name was.

Q. Was he a detective?

A. I don't know. I never asked him.

Q. What inducement did he hold out to you to be a witness in this case? What did he tell you he would do if you would testify?

A. He told me that he wanted me to tell all I knowed about this.

Q. What did he tell you he would do if you did tell all you knew about it?

A. He didn't tell me he would do anything.

Q. What were you to get?

A. He never said that I would get anything.

Q. Had you served out your term as a United States prisoner at the time this gentleman whom you think was a lawyer interviewed you?

A. Served out my time?

131 Q. Yes.

A. No; they got me down before a court, and I stayed down there.

Q. You did not serve out your time? You were released from the time you had to serve out?

A. Yes, sir; and I just stayed down until I had my trial, and when I had my trial I went back home.

Q. You went away after the lynching, did you?

A. No, sir; I was there in jail when the lynching took place.

Q. How long did you stay in jail after that?

A. I can't tell you how long I stayed in jail after that.

Q. You do not remember?

A. No; it was a week, or it might have been some over a week, or it might have been not quite a week.

Q. What was the name of this gentleman who was there in jail with you—the white gentlemen who did the writing for you?

A. I don't know what his name was.

Q. Did you never learn his name?

A. No; I never learned his name.

Q. Do you know what that gentleman was in jail for?

A. Yes; he said he was in there for murder.

Q. That gentleman was in there for murder?

A. Yes, sir; that is what he said.

Q. And the colored gentleman was in there for rape, he said?

A. That is what his wife told me her husband was in for.

132 Q. You were not in the same compartment with either of these prisoners?

A. No; I was on the upper floor, and the colored man was between me and the white man, and there was a wall between me and the colored man.

Q. Were you on the same floor with the colored man and the white man?

A. Yes, sir.

Q. There was a wall between you?

A. A wall between us.

Q. And you could not see either of them?

A. No; I couldn't see neither.

Q. You were alone in your room or cell at the time this lynching occurred, were you?

A. Yes, sir.

Q. By yourself? There was nobody there with you?

A. No; there warn't nobody in my room with me at all.

Q. You were not afraid of being lynched? You had never heard of a lady being lynched for selling moonshine whiskey, had you?

A. I didn't know what it meant.

Q. How long after this night jailer told you you had better go back, as there was going to be a mob that night, was it before you went to bed?

A. After he told me that, I just come up and just laid down on the bed.

Q. Right straight? Right away?

A. Yes; I just come right back to my room and laid down.

Q. How long was it after you had lain down before you heard this noise of the mob?

133 A. It warn't but a little while.

Q. Just right away?

A. Yes; it warn't but a little while.

Q. When Mr. Sanford suggested it to you you said this might have been six o'clock when this conversation occurred, but it must have been a good deal later than that if the mob occurred at nine, was it not?

A. I couldn't tell you what time it was.

Q. You have no idea what time it was?

A. No; it might have been six, and then after six. I can't tell you what time.

Q. But you do know this: That you went immediately, when the man told you there was going to be a mob, and lay down?

A. Yes, sir.

Q. And that in a very few minutes the noise of the mob occurred?

A. Yes, sir.

Q. You know that?

A. I hadn't been asleep.

Q. And only a few minutes elapsed; is that true?

A. What did you say?

Q. There was only a few minutes' time between the time you lay down and the time when you heard the mob?

A. It warn't long.

Q. Who was this man who said that there might be a mob there?

A. Why, it was Mr. Gibson.

Q. Mr. Jeremiah Gibson, was it? Mr. Jerry Gibson?

A. Yes, sir; the night jailer.

Q. Were you sick that night?

134 A. No; I warn't feeling well.

Q. How long had you been in jail?

A. Well, I had been in jail, I think, about two weeks.

Q. Was that your first jail experience?

A. Yes, sir.

Q. The first time you had been in jail?

A. Yes, sir.

Q. They had not got you before?

A. Well, I had never done nothing.

Q. You had not been doing that very long?

A. I had not done nothing.

Q. They really had not caught you, had they? I want to know what your name is.

A. Ellen Baker.

Q. What was your name, Mrs. Baker, before you married Mr. Baker?

A. Why, I was a Monday before I ever was married. I have been married twice. Then I married Mr. Walker.

Q. What Mr. Walker was that?

A. Brown Walker.

Q. Where did he live?

A. We lived in Uniontown, in Georgia.

Q. Where is Uniontown?

A. Union County, Georgia.

Q. That is near Polk County, Tennessee, is it not?

A. It was a good piece from Polk County.

Q. About how far?

A. It is about twenty-five miles.

Q. It adjoins Polk County, does it, or not?

A. Yes; I think it does.

135 Q. What became of this first husband of yours?

A. My first husband?

Q. Yes.

A. Why, I don't know.

Q. Do you know where he is now?

A. No, sir.

Q. You did not obtain a divorce from him, did you?

A. Yes, sir; I got a divorce from him.

Q. Before a justice of the peace?

A. Yes, sir.

Q. And you married this other man, then?

A. Yes, sir.

Q. How many children did you have by this first husband of yours?

A. I just had one.

Q. Did you have any before you married him?

A. No, sir.

Q. How many by this second husband?

A. Not any at all.

Q. Not any at all by this second husband?

A. No, sir.

Q. How long after you got this divorce through the justice of the peace from your first husband was it you married this second man?

A. Why, it was seven or eight years; somewhere along there.

Q. Where did you live then?

A. I lived in Union County, Georgia.

Q. You had no husband during that period of time?

A. No, sir.

Q. How many children have you in all?

136 A. I just got one. I stayed at home with my brother and my mother.

Q. What is the name of your present husband?

A. Brown Walker.

Q. And your name is Baker?

A. Yes, sir.

Q. How is it you call your husband Brown Walker and your name is Baker?

A. I married again.

Q. I am talking about this last man. What is his name?

A. My last man is Mr. Baker.

Q. What sort of Baker? What is his first name?

A. Allen Baker.

Q. Where does he live?

A. We live in Ducktown.

Q. What does Allen Baker do?

A. Why, he works at the furnaces.

Q. That is, the copper furnaces there?

A. Yes, sir.

Q. Do you and he live together?

A. Yes, sir; me and him lives together; he come with me down here.

Q. Have you been living together all the time?

A. Yes; we have been living together ever since we have been married.

Q. Ever since you have been married, of course?

A. We have been married along since the first of March.

Q. The first of what March?

A. Last March.

137 Q. You were just on your bridal tour when you were in jail then?

A. I just had been married a few days, three days.

Q. Did your husband accompany you on that tour?

A. What did you say?

Q. You' husband was not with you when you were in jail?

A. No, but he come.

Q. He came occasionally?

A. Yes, sir.

Q. Where in Ducktown do you live?

A. Where in Ducktown?

Q. What part of Ducktown?

A. Why, we live up in Tennessee, Ducktown.

Q. Ducktown, in Tennessee; but there are a whole lot of Ducktowns—that is, there are various divisions of that town called by different names. What is the name of the portion of Ducktown that you live in?

A. I never heard it called nothing else but Ducktown.

Q. Do you live in McKays?

A. No; we live about a mile below McKays.

Q. A mile towards Knoxville or towards Atlanta, from McKays?
A. We live about a mile down this way.
Q. Down this way?
A. Yes.
Q. Do you live on the Ocoee River or the Hiwassee?
A. Yes; that is what they call it, the Ocoee River, I think. We ain't been living there long.
Q. How long have you been living there?
A. We ain't been a living there powerful long.
138 Q. About how powerful?
A. We have been living all winter over in Staffordtown.
Q. What is Staffordtown?
A. It is just a little town.
Q. Is that a part of Ducktown?
A. It is just a little town, all I can tell you.
Q. How far is that Staffordtown, where you have been living all this time, from where you are living now?
A. It is about a mile and a half.
Q. How long have you been living where you are living now?
A. We ain't been living there more than about a month and a half.
Q. How long had you been living at Staffordtown?
A. We lived there all last summer.
Q. Where did you live before you lived at Staffordtown?
A. What did you say?
Q. Where did you live before you lived at Staffordtown?
A. I was living with my brother. Then we married, then we moved to Staffordtown.
Q. You lived with your brother?
A. Yes, sir.
Q. Where did he live?
A. He lived at Ducktown.
Q. What is your brother's name?
A. Peyton Monday.
Q. What does he do?
A. Why, he works.
Q. What kind of work?
139 A. Why, he works like the other man.
Q. What works does your husband work for?
A. The copper company.
Q. There are several furnaces around there?
A. Yes; they are all about, different names.
Q. What is the name of the furnace your husband works for?
A. I never asked anything that way.
Q. Where is it located. How far is it from where you live? Is it the one nearest to you, or the one farthest from you?
A. It is the furnace nearest to us.
Q. It is the furnace nearest to your house; is that the one he works for?
A. Yes, sir.

Q. Do you know the superintendent, the foreman he works under?
A. Yes, sir.
Q. What is his name?
A. Mr. Robertson.
Q. Do you know his given name?
A. Yes, sir.
Q. Tell it.
A. Bill Robertson.
Q. Bill is the foreman, is he?
A. That my husband works for.
Q. What does your husband do?
A. He works there. I never go in them works. He works just like the other man.

140 Redirect examination by Mr. SANFORD:

Q. Mrs. Baker, I wish you would tell us, to your best judgment, just how long it was between the time you had that talk with Gibson downstairs, when you went down and talked to Jailer Gibson, and he told you you had better go up because it was likely a mob was coming—how long it was from that time until you heard this racket downstairs?
A. Well, sir, I just can't tell you.
Q. Are you able to give any accurate statement?
A. No, sir; I just can't; I ain't able to tell you.
Q. You went up and had gone to bed?
A. I went up and laid down on my bed, and laid there.
Q. You lay there a while?
A. Yes, and then I heard the racket.
Q. But how long it was, whether it was a minute or two, or an hour or two, you can not tell?
A. No, sir; I can't.
Q. When you were allowed to go out in the ward and get this white man to write for you, could you see this negro Johnson in his cell? You saw him, did you?
A. Sometimes I would look in there and sometimes I would just go on and didn't pay no attention.
Q. I mean you could see him if you looked when you were outside?
A. Yes; I could look, and sometimes I would see him and sometimes I would just go on and wouldn't look.
Q. You never saw him after that night?
A. No; they brought up some more darkeys there, and they put them in there. I don't know one darkey from another.
141 Q. You never saw him that you know of again?
A. I seed several darkies down there. I don't know none of them apart. You see, everybody was strangers to me.
Q. When were those other darkies brought up?
A. The day that I had my trial up here I think they took some up on the upper floor. You know I was to have my trial one evening,

and I never had it until the next morning, and then when I went back down there they had put somebody up there to that room where that darkey was. I heard them laughing and cutting up. Then before that I think they had brought one up there.

Q. Can you fix the date?

A. No.

Q. Can you tell how long it was after that night?

A. No, sir; I can't. I just stayed in my room all the time. I hardly ever went to the door, only just when I would go over thar to get that man to write some for me. Mr. Brown told me to stay in my room, that I warn't allowed to go nowheres only there in my room.

Mr. SANFORD. Mr. Pritchard, I understand from this witness that she is afraid her little boy is sick with a fever, and if you can finish with her examination so she can go back, she has asked me to let her go.

The WITNESS. He is sick with a fever.

Mr. PRITCHARD. I can finish with her this afternoon, but I can not finish now.

Mr. SANFORD. Mrs. Baker, you come back after dinner.

Mr. PRITCHARD. I want to ask a question now.

142 Recross-examination by Mr. PRITCHARD:

Q. How old are you?

A. I am twenty-seven years old.

Q. How old were you when you were first married?

A. First married? I don't know how old I was.

Q. You were single seven or eight years, you say, after the divorce?

A. About twenty-seven or twenty-eight; I can't tell you.

Q. You were a widow seven or eight years?

A. Yes; I was a widow.

Q. How long were you married to the first man? How did you and he live together?

A. We lived together some over a year.

Q. Something over a year?

A. Yes, sir.

Q. And you have been married to your present husband a year?

A. Yes, sir; along in the first of March.

Q. And you are now twenty-seven years old?

A. I am about twenty-seven or twenty-eight, and I can't tell.

Q. Can you read?

A. No, sir; I can't read.

Q. Nor write?

A. No, sir; I can't write.

Q. How old is this child you speak of?

A. Why, I reckon he is about ten years old.

Mr. PRITCHARD. Now, if you will notify her to come back
143 here when we meet again at two o'clock, I will try to get through to-day.

Mr. SANFORD. Yes; do that, Mrs. Baker, and we will try to let you go home.

The WITNESS. Yes; I am obliged to go home this evening. My little boy is taken sick, and I had to leave him.

Mr. SANFORD. Mr. Commissioner, I suggest that you fix the recess time generally at half past twelve and meet at two, if that would be satisfactory to counsel.

Mr. PRITCHARD. That is entirely satisfactory; yes.

Mr. SANFORD. It would hardly do to start with another witness at this time, so if it is agreeable we will take a recess now.

A recess was thereupon taken until two o'clock p. m.

AFTER RECESS.

The hearing was resumed at two o'clock p. m.

Mr. SANFORD. Gentlemen, are you willing to waive the rule as to Dr. Jones?

Mr. PRITCHARD. I am not.

Mr. SANFORD. Mr. Commissioner, Mr. McAdams is a government agent and we would like to have him present as a representative of the Government to aid us. We understand the Government is entitled to have one representative. Mr. Pritchard, do you wish to examine Mrs. Baker any further?

Mr. PRITCHARD. Yes.

Mrs. ELLEN BAKER was recalled for further cross-examination by Mr. Pritchard.

Q. What did you say your name is?

A. Ellen.

Q. Are you known by the name of Elmina, or Elminer?

A. Yes, sir; that is my name, too.

Q. That is your name, too?

A. Yes, sir; my right name is Ellen, and my brother he named a little girl after me, and then they nicknamed me.

Q. They nicknamed you?

A. Yes, sir.

Q. Your real name is Elmina?

A. Yes, sir.

Q. Elmina Monday your name was.

A. Yes, sir; before ever I was married.

Q. After you were married to the first man and after you and he separated, you were still known by the name of Elmina Monday, commonly known as Elmina Monday, were you not?

A. Yes; after I come back and stayed a while, then they just called me after the rest of my sisters that was there at home.

Q. Your married name did not signify, but the original name, Monday, was the name you were known by?

A. Yes, sir.

Q. And that is the name you were indicted by?

A. What did you say?

145 Q. When you were indicted here in this court, that is the name you were indicted by?

A. Yes, sir.

Q. And you were convicted in this court instead of acquitted, were you not?

A. What did you say?

Q. You were convicted, found guilty? The jury found you guilty, did they not?

A. Yes, sir.

Mr. PRITCHARD. In that connection I want to offer in evidence the entry from the records on the 3d day of April, 1906, in the case of the United States versus Elmira Monday, No. 3108, on page 346 of the record, and I will ask that that be transcribed by the stenographer into the record.

Mr. SANFORD. What is the substance of it? Just tell me what is the substance.

Mr. PRITCHARD. It is a conviction of Elmina Monday.

Mr. SANFORD. Just read it.

146 Mr. PRITCHARD. It is as follows:

"April term, 1906. Minutes 3 day of April, 1906.

"THE UNITED STATES *vs.* ELMINA MONDAY. } V. R. L. No. 3108.

Came the United States attorney, and the defendant in proper person, who having heard the indictment read for plea says he is not guilty in manner and form as charged therein and of this he puts himself upon the country and the district attorney doth the like, and thereupon came the following jury, to wit: Walter Guthrie, Jno. H. Smith, J. W. Allison, Henry Giles, H. B. Wood, W. T. Smith, Sam P. Henderson, W. E. Smith, Milo Brown, Jno. Smith, Jerry Gibson, E. H. Matthews, good and lawful men, citizens and freeholders of the southern division of the eastern district of Tennessee, who being duly elected, tried, and sworn to try the issue joined between the parties, upon their oaths do say that the defendant is guilty as charged.

"Whereupon it is considered by the court that for his said offense the defendant pay a fine of two hundred dollars and the cost of this prosecution, for which let execution issue, and that he be confined for 5 months in the jail of Hamilton, Tennessee. But for satisfactory reasons appearing, the judgment is suspended until the further order of the court."

147 Mr. PRITCHARD. This, I would state, is a stamped entry, except the last few lines, the names of the parties, the jurors, the term, and the amount of the fine.

Mr. SANFORD. I think that is all we can ask this witness at the present. We do not want to inconvenience her, but we shall probably want this woman back again.

Mr. SANFORD. It is just as I have said. Her child is sick with a fever and she wants to go.

Mr. PRITCHARD. She can be relieved to go home if you will have here brought back when we need her.

Mr. SANFORD. It depends upon the probability of your wanting her again.

Mr. PRITCHARD. It is not certain that we will want her, and we will not call for her unless we are bound to have her; but in case we should need her, we would not want her to be where we could not find her.

The WITNESS. That is where I always live.

Mr. SANFORD. I would like to ask the witness one question.

Redirect examination by Mr. SANFORD:

Q. You have heard that order read. Do you understand you were acquitted, or that you were convicted? What do you understand by it?

A. What do you say?

Q. After you were tried, did Judge Clark let you go home? Were you sent back to jail, or were you allowed to go loose?

A. He said I was clear.

Q. That is the way you understood it?

148 A. Yes, sir; they said I was clear.

Q. You were not sent back to jail any more, were you?

A. What did you say?

Q. Were you sent back to jail any more?

A. No, sir; not after I come clear.

Q. You understood you came clear?

A. Yes, sir.

Q. You went home and you have been there ever since?

A. Yes, sir.

Recross-examination by Mr. PRITCHARD:

Q. You answered all Mr. Sanford's questions in the affirmative. Did you not understand the jury said you were guilty?

A. Yes, sir; the jury said I was guilty.

Q. You knew that meant they had found you guilty, did you not?

A. Yes, sir; I went to dinner, and when I come back, they said——

Q. You were guilty?

A. They said I was clear.

Q. That is what Judge Clark said, did he not, out of commiseration and pity for you, being a woman? Did he not put it upon the ground and let you go upon the condition that you would not sin in like manner any more? Was not that the condition upon which he let you go, that you would promise you would not go back and violate the revenue laws?

149 A. Yes; he said if I wouldn't be guilty of that crime any more.

Q. He would not put you in jail?
A. Yes, sir.
Q. But you were guilty. This was just suspended and hung over you, and you might be called for again. Did he not explain that to you?
A. I don't know.
Q. Did he not tell you you were a poor woman and that the jury found you guilty, and that he assessed this punishment of a $200 fine and five months' imprisonment against you, but that in consideration of your poverty and the fact that you were a woman he would let you go if you would not do so any more?
A. Yes, sir.
Q. That is what he told you, and you understood that, did you not?
A. Yes, sir.

By Mr. SANFORD:

Q. That is what you meant by saying you were acquitted? Is that what you understood by being acquitted?
A. Quit what?
Q. You said that you were acquitted. Is that what you meant when you said that you were acquitted?
A. Quit what?
Q. That you were acquitted.
A. Yes, sir.
Mr. CLIFT. If the court please, your honor, we object to that question.
150 The COMMISSIONER. The stenographer will note the objection.
Mr. SANFORD. Gentlemen, if this witness goes we will agree that she may be sent for. We do not want to be responsible for her coming back. We do not know whether we can get her back or not.
Mr. PRITCHARD. I understand; you will not be responsible.
Mr. CLIFT. We understand you will use the same diligence to get her here as if you wanted her here yourself.
Mr. SANFORD. We will do that.
Mr. PRITCHARD. That is all we can ask of you.
Mr. SANFORD. You can go home, Mrs. Baker.
Mr. PRITCHARD. If we send for you, we will want you to come back.

J. P. FYFFE, a witness introduced on behalf of the United States, having first been duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. What is your full name?
A. J. P. Fyffe.
Q. Do you live in Chattanooga?
A. Yes, sir.
Q. Have you been connected with a military organization here?
A. Yes, sir.

Q. In what capacity?

151 A. As captain of cavalry.

Q. Are youc connected with one of the papers here now?

A. Yes, sir.

Q. In what capacity?

A. Editor.

Q. Were you captain of cavalry in March, 1906?

A. Yes, sir.

Q. Do you remember the night in March, 1906, on which the Ed Johnson lynching occurred?

A. I remember the night, but I can not of my own knowledge recall the exact date.

Q. You remember the night on which that event occurred?

A. Yes, sir.

Q. Captain, where were you that evening?

A. I left home about half past seven o'clock, went down Oak street, crossed through the court-house yard, down Sixth street to the corner of Fourth and Market to the armory, remained there until about 10.30 or eleven, went up Market street to the corner of Eighth and to the Calumet Club, in the First National Bank Building. At something after eleven o'clock I went from there to the jail. From there I went to the county bridge, and from there I got home something after midnight.

Q. Were you drilling at all that night, or was your company drilling?

A. Yes, sir.

Q. Where was it drilling?

A. In the armory, at the corner of Fourth and Market.

Q. How far is that from the jail?

A. About three squares.

152 Q. When was your company drilling; at what hour?

A. It began at eight o'clock and drilled until about ten or half past.

Q. Was there any call for your company to come and help suppress a mob?

A. Not that night.

Q. Had you been called on before?

A. Twice.

Q. When, Captain?

A. The first time was early in January and the second time was some time after that a short while. I can not recall the dates.

Q. Between the January call and the night of the Johnson incident?

A. Yes, sir.

Q. Your company turned out on those occasions?

A. Yes, sir.

Q. Was the place where it drilled a well-known place in the city?

A. Yes, sir.

Q. Where had you been sent for before? Where had the call been sent for you?

A. The first night I was at home when I got the call about nine o'clock. I was sitting at home reading when I got that call. The next call I got sometime in the day time.

Q. Who called for you at those times?

A. The governor.

Q. And your company turned out in obedience to that call?

A. Yes, sir.

153 Q. Had there been any excitement here, and had the atmosphere been somewhat unrestful, apprehensive of danger, at those times?

A. Yes, sir.

Q. What was the condition of the race feeling at that time?

A. A portion of that time there was a good deal of feeling. I don't know that it was particularly a race feeling, but there was an impression that if this crime had been committed the man who committed it ought to die, and if the courts did not take prompt action in the matter, a certain class of people probably would.

Q. And if there was any delay there would probably be a lynching, in other words?

A. Yes, sir.

Q. That was in the atmosphere, as I understand you?

A. Yes, sir.

Q. That idea?

A. Yes, sir.

Q. Was that at this time—the time of the Ed Johnson lynching, and prior to that time?

A. That was prior to the time of the lynching.

Q. The general feeling that there must be speedy action taken in that matter?

A. Yes, sir.

Q. That a certain class of people would take action if the courts did not?

A. Yes, sir.

Q. Do you know whether Captain Shipp was then a candidate for a renomination.

154 A. Yes; he was. I don't know whether he was a candidate for renomination or not. He was a candidate for reelection. I don't know when the primary was held. He was a candidate for sheriff, however.

Q. At that time?

A. Yes, sir.

Cross-examination by Mr. PRITCHARD:

Q. You left home about seven thirty, you say, Captain?

A. Yes, sir; between seven thirty and eight.

Q. Where did you go?

A. I went to the armory.

Q. And remained there until when?

A. Sometime between ten and eleven.

Q. Did you know that the lynching was going on on the bridge?

A. I heard of the lynching after I reached the Calumet Club.

Q. What time was that?

A. That was sometime in the neighborhood of eleven o'clock.

Q. After the lynching was over—after the death of Johnson?

A. I don't know exactly what time the death of Johnson occurred.

Q. Did you understand that the man had been lynched at that time?

A. I first understood that he was to be lynched, and within a few minutes after that—perhaps I could get at it better by
155 telling the story. As I reached the club I was hailed by a gentleman who told me that he understood there was to be a lynching, and the troop would probably be called for. I told him I didn't think there was anything in it, that I had heard that old story around here a good while. Presently another gentleman came up and said the same thing, and to satisfy myself I went to the telephone to call the jail. Central told me that the jail could not be reached by telephone, that the telephone was cut off. I then called the residence of Mr. Johnson, adjoining the jail, and they told me there that a mob had taken Johnson from the jail and gone out Walnut street with him some little time before that. Then I proceeded on to pursue the matter to see what I could find out.

Q. You found that the lynching had occurred?

A. I went to the jail and saw the door, or the place where it had been, and went out on the bridge and saw the body.

Q. That was about eleven o'clock or later?

A. That was eleven, or it was after eleven.

Q. You were asked by the attorney-general about your being called out. I will ask whether the sheriff has any authority to call out the militia in Tennessee?

A. No, sir; he has not.

Q. Would you or would you not have responded to it if he had called on you?

A. I would not.

Q. Or would you have had any authority to respond?

A. I would not.

Q. You referred, in response to a question in chief, to the fact that there was in the atmosphere a feeling or sentiment among a
156 certain class of people to the effect that if the defendant, Johnson, was guilty of this crime and was not promptly dealt with by the courts he would likely be lynched?

A. Yes, sir.

Q. I will ask you whether or not that feeling existed long before there had been any appeal or application to the federal courts in this matter?

A. Yes, sir; it existed, and was attributed in the gossip and rumors that went around, to the speedy trial granted him by the state court.

Q. I will ask you whether or not, while the state courts had charge of the case, that feeling was not at times highest and intensest?

A. It was much more intense then than it was afterwards, to judge from conversation indulged in and overheard on the streets.

Q. This testimony is being taken now in the United States Circuit Court room at the custom-house?

A. Yes, sir.

Q. You live in Chattanooga and have lived here many years?

A. Yes, sir.

Q. It is now about fifteen minutes to three o'clock. I will ask you to look around in this court room and in the auditorium of the court room. Turn your chair and look around the court room. I will ask you to state what proportion of the auditorium is filled with colored people?

Mr. SANFORD. I desire to note an objection to that testimony, as entirely irrelevent and utterly incompetent to any issues in this case.

157 The COMMISSIONER. The stenographer will note the objection.

By Mr. PRITCHARD:

Q. In other words, estimate in your judgment how many people are in the auditorium of this court room, and what proportion of them are white and what proportion are colored?

A. I should say 200, and ninety-five per cent of them back of the rail are colored.

Q. In regard to the race feeling, as the Attorney-General has put it, was the sentiment that you refer to a sentiment aroused by the character of the crime that had been committed and its atrocity?

A. It was.

Redirect examination by Mr. SANFORD:

Q. As I understand, you think there was an intensity of feeling on account of the atrocity of the crime that had been charged?

A. Yes, sir.

Q. And that had accentuated and intensified this feeling?

A. Yes, sir.

Q. And the feeling that if there was delay in the punishment of the crime a certain element would take the matter in their own hands?

A. I don't believe I would quite put it that way. The sentiment in the community was this, as I understand it—that if an innocent white woman has suffered in this way at the hands of any man

158 he should be put to death, and put to death immediately, the delays usually incident to court trials not to be tolerated; if the court was willing to take punctual action and if the evidence showed that this man was guilty he should be immediately executed; otherwise there were people who would take the law into their own hands.

Q. Captain, did you understand that as a matter of law the sheriff had the right to summon a posse of people, whether they happened to be militiamen or not, to come to his aid in an emergency?

A. Yes, sir.
Q. You understood that to be the law in Tennessee?
A. Yes, sir.

Recross-examination by Mr. PRITCHARD:

Q. But not to call out the militia?
A. Not to call out the militia.

By Mr. SANFORD:

Q. You understood he could have summoned you as individuals but not in your military capacity?
A. He could have summoned us as individuals, but not ordered us out as soldiers.
Q. Yes; that is the distinction.

By Mr. PRITCHARD:

Q. You passed through the court-house yard at what time?
A. About a quarter to eight; possibly a little bit later.
Q. And how near to the jail?
159 A. Within about 200 or 250 feet.
Q. Was there anything going on, any assembly, any circumstance, to indicate that a lynching or a mob was intended?
A. Nothing that I saw.
Q. Anything to create apprehension on your part or a suspicion that such a thing was about to be sprung?
A. No, sir; there was not.
Q. How many troopers did you have out that night?
A. I couldn't say exactly. I should judge about forty.
Q. Where are they from?
A. They are from Chattanooga.
Q. Are they scattered over the city, and do they reside in different parts of the city?
A. Yes, sir; they reside all the way from East Terrace out to Highland Park; all over town.
Q. Does that cover much territory?
A. It covers every ward in the city except possibly South Chattanooga.
Q. And the population of the city in that territory is about how much?
A. The population of the seven wards north of Montgomery avenue; they are scattered pretty liberally over.
Q. About what is the population of the city in this territory from which your troopers come?
A. About thirty thousand.
Q. That part of the city that you refer to?
A. Yes, sir.
Q. You are personally acquainted with all the members of your troop?
160 A. Yes, sir.
Q. You were there with them for several hours?
A. Yes, sir.

Q. Was there any intimation to you from any member of your troop that any lynching was impending? Did you hear anything of it at all?

Mr. SANFORD. I desire to note an objection to that testimony as incompetent and irrelevant.

The COMMISSIONER. The stenographer will note the objection.

By Mr. PRITCHARD:

Q. I ask for the fact whether there was any intimation from any member of your troop that there was any lynching to be expected or impending that night?

A. No, sir; there was not at that time.

Q. When you refer to that time, you refer in that answer to your previous statement?

A. I mean this. There was a member of my troop who knew about it and told me afterwards that he knew about it, but he never told me anything about it that night. He stayed at the armory some time, and was very careful, so he said, not to say anything about it.

By Mr. SANFORD:

Q. Who was that man?

A. Sergeant Campbell.

Q. What are his initials?

A. Gordon Campbell.

161 JOHN T. EVANS, a witness produced on behalf of the United States, having been duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Mr. Evans, you live in Chattanooga now?

A. Yes, sir.

Q. What is your employment?

A. The Chattanooga Star.

Q. You are a reporter?

A. Yes, sir.

Q. In May of last year where were you living and where were you employed?

A. Birmingham, Alabama; on the Age-Herald.

Q. A reporter on the Age-Herald?

A. Yes, sir.

Q. Do you know Sheriff Shipp, one of the defendants in this case?

A. I do.

Q. Did you know him at that time?

A. I did.

Q. Had you previously lived in this city?

A. Yes, sir.

Q. Did you, on May 28, in Birmingham, see Captain Shipp and have a conversation with him in reference to the occurrences in this Johnson matter?

A. I saw him in Birmingham, about——

Mr. CLIFT. One moment. We want to enter an objection to that question, on this ground, if the court please: Any conversation that transpired between these parties afterwards cannot be looked to as evidence in regard to the allegations contained in the information which we are trying. For that reason we want to enter an objection to that.

162

The COMMISSIONER. The stenographer will note the objection.

A. I saw Captain Shipp in Birmingham and had a talk with him about this matter about that date. I think it was May 28th.

Q. Did you report that in the Birmingham Age-Herald of the next day?

A. Yes, sir; I did.

Q. Did you report that accurately?

A. Yes, sir; I think I did.

Mr. PRITCHARD. I object to that line of examination for two reasons: First, that it is most flagrantly leading, and, secondly, that the original and admissible testimony would be a statement of what Captain Shipp said, and not a subsequent report by the witness of what Captain Shipp said.

The COMMISSIONER. The stenographer will note the objection.

By Mr. SANFORD:

Q. I will ask you to state whether in the course of that conversation he made any statement in reference to whether he made any effort to hurt any of the mob.

A. No, sir; he didn't say anything. He said he tried to protect—I will give this, to lead up to that. He said that he had always tried to protect this negro, Ed Johnson, and he said on the night of the mob, when the negro was lynched, he did not make any efforts to hurt any member of the mob, or words to that effect.

Q. Or words to that effect?

163 A. Yes, sir.

Q. I will ask you if he said what the trouble was and what the fault was; and if so, what did he say?

A. I don't exactly understand your question.

Q. What had caused the trouble; what had caused the mob; the lynching?

A. I don't remember what he said on that.

Q. Did he make any reference to courts in any way—any court?

A. Yes, sir; he said it was a matter of politics in the United States Supreme Court.

Q. I did not mean to ask you that. I did not call for that. Did he make any statement with reference to any action of any court in reference to causing the trouble. That is what I meant to inquire about. If so, what did he say?

Mr. CLIFT. If the court please, we want it understood we are objecting to all those questions with reference to any conversation that took place after this transaction.

Mr. SANFORD. I understand. Without offering this statement in evidence, I ask you to look at this and see whether it is an accurate statement of what occurred in that conversation?

Mr. PRITCHARD. I object, for the reason that the witness has not called for the paper to refresh his recollection, and the only purpose that his reading it could serve would be to lead the witness, and the witness has not professed to have any dimness or defect of recollection.

The COMMISSIONER. Note the objection.

By Mr. SANFORD:

164 Q. Read that over, Mr. Evans.

Mr. PRITCHARD. I will ask to have it noted that the witness, at the request of the attorney-general, reads the paper.

Mr. SANFORD. Yes.

The COMMISSIONER. The stenographer will note that the witness is reading the article.

By Mr. SANFORD:

Q. I ask you to look at it and refresh your recollection as to that conversation.

Mr. PRITCHARD. My point is that the witness has not stated that his recollection needs refreshing.

A. (After reading the article.) That is the interview I got with Captain Shipp and reported for the Age-Herald.

Q. I will ask you if in that conversation he stated anything about how he learned of the mob.

A. Yes, sir.

Mr. CLIFT. If the court please, we object to that because it is leading; and not only that, but the question should be propounded so as to ask what he did state, instead of asking whether he said anything about this or that.

Mr. SANFORD. I was not trying to suggest any answer.

A. He did state that.

Q. What did he say?

A. He said the first information he got was from the Chattanooga Times through the telephone.

Q. The first information about what?

A. About the lynching.

Mr. PRITCHARD. The first intimation, I understood him to say.

A. The first information.

By Mr. SANFORD:

165 Q. About the lynching.

A. Yes, sir; from the Chattanooga Times over the telephone.

Q. I will ask you whether he stated anything with reference to the effort that he made to prevent the lynching that night, and if so what he said?

A. I don't know that he said anything about that night, but he spoke of the protection that he had always tried to give the negro since he had been in his custody.

Q. You mean before that night?

A. Yes, sir.

Q. Did he say he made any effort that night, or did he say that he did not? What did he say on that subject?

A. I couldn't say what he said on that subject. I remember very well him saying what he did previous to that night.

Q. Did he say anything about making any effort to prevent the mob that night from lynching Johnson? Did he say anything on that subject, whether he did or did not endeavor to use force with that mob?

A. I don't remember.

Q. You do not remember?

A. No, sir; I couldn't say.

Q. Do you remember what he said with reference to what had caused that lynching?

A. Well, he said that the people of Chattanooga were perfectly willing to let the law take its course, and always had been, but that delay——

Q. What delay?

A. The delay in letting the law take its course, I suppose.

166 Q. In what way? In any particular court?

A. I should judge, from what he said, in all the courts.

Q. Delay in letting the law take it course had done what?

A. Was perhaps really at the bottom of the lynching.

Q. I again hand you that Birmingham Age-Herald of May 29th, and ask you what that article is in the last column on the first page and running over on the eighth page?

A. The first part of it is a special from Washington.

Q. What is it headed?

A. "Uncle Sam goes after lynchers in Chattanooga."

Q. Take that same article, the subhead, halfway down the page?

A. The next is what is known as a local story.

Q. What does that say?

Mr. PRITCHARD. Are you offering it in evidence?

Mr. SANFORD. Yes. I am just trying to identify it now.

Mr. PRITCHARD. But I do not want him to read it until it is identified.

Mr. SANFORD. This does not give any of the details. It is a general statement, just giving the subhead, so as to identify it.

A. The subhead on the local story is, "Sheriff Shipp states his attitude, Chattanooga officials says."

Q. Do not read that. How far does that go down?

A. It continues over on to the eighth page.

Q. What is that last article under the last subheading you have given? What is it and who wrote it? This article beginning

167 with this subhead on page 1, "Sheriff J. F. Shipp states his attitude," running down the rest of that column and continued on the first two columns of page eight. What is that article?

A. That is an interview that I secured from Captain J. F. Shipp on the afternoon of May 28th at the Union Depot in Birmingham, Alabama, printed the next morning in the Birmingham Age-Herald. I got the interview and wrote the story.

Q. I ask you whether that is an incorrect or a correct account of what he said? Is it correct or incorrect?

A. It is correct.

Mr. SANFORD. I offer that in evidence.

Mr. PRITCHARD. I object to its introduction as evidence upon the ground that the witness' testimony and not some report of the testimony is the best evidence of what the interview was.

The COMMISSIONER. The stenographer will note the objection.

Mr. SANFORD. It need not be read, but it may be just copied by the stenographer.

The newspaper article referred to is in words and figures following, to wit:

168 "UNCLE SAM GOES AFTER LYNCHERS IN CHATTANOOGA.

"Sheriff Shipp, who spent day in Birmingham, says he is not alarmed.

"Did all in his power to protect the negro.

"Attorney-General would have lynchers show cause why they should not be punished for contempt.

"Washington, May 28.—(Special)—After more than two months' delay, the United States Supreme Court to-day took cognizance of the lynching of the negro, Ed Johnson, by a mob in Chattanooga, and ordered the sheriff of Hamilton County, Tennessee, and twenty-four members of the mob to show cause at the first meeting of the court in October why they should not be punished for contempt.

"The action of the court came as a surprise here, as it doubtless will be in Chattanooga. Immediately after the lynching there was every reason to believe that the court would bring the offenders before it for contempt, but as nothing was said by the court in reference to the case it was generally presumed that all proceedings would be abandoned. Johnson, who had been convicted for criminal assault, was granted a writ of habeas corpus upon application to Justice Harlan. The same night he was taken from the jail and lynched.

169 "CASE ATTRACTED MUCH ATTENTION.

"The case attracted considerable attention, and the President at once called his Attorney-General in conference with him in order to

see if there was any way in which the President could take a hand in the proceedings. The President regretfully learned that it was entirely a matter with the state authorities, and there was no chance for him. At this point the Supreme Court got in communication with the Attorney-General, to-day's motion being the result of that official's investigation.

"There is said to be a strong conviction among certain members of the court that Johnson primarily was really not guilty of the crime, though, of course, this does not enter into the determination of the question before the court in October.

"SHERIFF J. F. SHIPP STATES HIS ATTITUDE.

Chattanooga official says he is not alarmed at the steps taken by Attorney-General.

"Capt. John F. Shipp, of Chattanooga, sheriff of Hamilton County, whom with several others the United States Government has taken steps to punish, upon the grounds that they were responsible for the lynching of the negro, Ed Johnson, in Chattanooga last March, returned home last night after spending two days in Birmingham. Sheriff Shipp says that his visit to Birmingham was purely one of pleasure. He came here Sunday morning and returned home at 6.50 o'clock last night.

170 "The sheriff of the east Tennessee county said yesterday that he was not the least bit alarmed over the news which came from Washington yesterday over the Associated Press wires.

"The negro, Ed Johnson, who was lynched in Chattanooga on the night of March 19, had been convicted by a jury on the charge of criminal assault upon a white woman, and on the day of the lynching the United States Supreme Court had granted a stay of execution upon an appeal by the condemned negro.

"MOODY FILES INFORMATION.

"In the Supreme Court of the United States yesterday Attorney-General Moody filed an information requesting that in consideration of the acts committed by the parties named a rule be allowed upon each of them to show cause why they should not be punished for contempt of the court.

"The persons named as defendant are John F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frawley, George Brown, Jeremiah Gusson, Marion Perkins, Joseph Clark, 'Nick' Nolan, 'Shenie' Warner, Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, 'Bart' Justice, John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond.

"STATEMENT OF SHERIFF.

"'I have known for some time past that secret agents of the Government have been in Hamilton County investigating the lynching there,' said Sheriff Shipp last night.

"'The first I knew of the mob was through a telephone message I received from the Chattanooga Times office, for they had
171 cut the wires at the county jail immediately upon their arrival. I dressed as quickly as possible and went to the jail, and found a crowd of about seventy-five people around it, most of them being in disguise. I made my way through the crowd into the jail and began remonstrating with them against taking any drastic steps. They seized me and took me upstairs, locking me up in a bathroom. The members of the mob told me they meant no violence to me. I argued with them against doing anything at all, since the law had so far taken its proper course. I am frank to say that I did not attempt to hurt any of them, and would not have made such an attempt if I could. In the first place, I could have done no good, as I was overwhelmed by numbers.

"'The Supreme Court of the United States was responsible for this lynching. I had given that negro every protection that I could. For fourteen days I had guarded and protected him myself. The authorities had urged me to use one or two military companies in doing so, but I told them I would land the negro in jail, which I did, individually.

"ONE MAN ON DUTY.

"'Many nights before the lynching there had been a sufficient guard around the jail. I had looked for no trouble that night and, on the contrary, did not look for it until the next day. That night no one was on duty except the jailer, which is the usual guard at our jail, as well as in other counties.

"'In my opinion the act of the Supreme Court of the United States in not allowing the case to remain in our courts was the most unfortunate thing in the history of Tennessee. I was determined that the case should be put in the hands of the law, as it was. The jury that tried the negro Johnson was as good as ever sat in a jury box.

172 "'The people of Hamilton County were willing to let the law take its course until it became known that the case would probably not be disposed of for four or five years by the Supreme Court of the United States. The people would not submit to this, and I do not wonder at it.

"'These proceedings in the United States Supreme Court recently appear to me to be only a matter of politics. I do not wish to appear in the light of defying the United States court, but I did my duty. I am conscious of it, thoroughly conscious of it, and I am ready for any conditions that may come up.'

"VIOLATED CONSTITUTION.

"The Associated Press dispatches from Washington yesterday concerning the documents filed by the Attorney-General said:

"After reciting the facts of the arrest, conviction, and sentence of Johnson, the denial of his petition for writ of habeas corpus by the circuit court, in which it was alleged, among other things, that the petitioner had been denied a trial by a fair and impartial jury and had been denied the aid of counsel, in violation of the fifth and sixth amendments to the Constitution and other rights under the fourteenth amendment; and the order of the court of March 19, allowing the appeal to the Supreme Court; and the fact of the telegraphing of the order of the court to John F. Shipp, sheriff of Hamilton County, who had Johnson in charge, and the publication of the action of the court in the Chattanooga evening papers, on that date the Attorney-General stated that the sheriff and his deputies had every reason to believe, from current reports and rumors conveyed to them, that an attempt would be made to lynch Johnson, and that notwith-
173 standing these facts the sheriff withdrew from the jail early in the evening of the 19th the usual guard and left in charge only the night jailer, Deputy Sheriff Gibson.

"FACTS ATTENDING LYNCHING.

"It was stated also about 9 o'clock of that night the defendants and a large number of other persons combined and conspired together to lynch and murder Johnson, with intent to show their contempt and disregard for the order of the court and for the purpose of preventing it from hearing the appeal allowed by the court, and for the purpose of preventing the prisoner from exercising a right secured to him by the laws and Constitution of the United States. The facts attending the lynching are given in the information filed, and the statement is made that although Sheriff Shipp returned to the jail while it was in possession of a mob, neither he nor Deputy Gibson did anything to prevent the lynching, but, in fact, aided those engaged in it.

"RULE NISI ASKED FOR.

"The Attorney-General closed as follows:

"'Wherefore the United States of America, the complainant herein, through their Attorney-General, respectfully request this honorable court that in consideration of the acts committed by the above-named defendants and each of them, as hereinbefore set forth, it will issue and direct the marshal of this court to serve on said defendants and each of them a rule to show cause, if any there be, on a day certain which said defendants and each of them should not be punished as and for a contempt of this honorable court.'

"The court granted leave to file as required, making the rule returnable on the second day of the next term of court, October 15 next.

174 "CAUSES SURPRISE IN CHATTANOOGA.

"Chattanooga, Tenn., May 28.—The action of the Attorney-General of the United States came as a surprise, the local grand jury having failed to find an indictment against the lynchers of Johnson, although strongly charged by Judge McReynolds. It is supposed that the evidence adduced was insufficient to make out a case against any suspect. Ten of the men named by the Attorney-General are officials, the sheriff and his deputies. The others are not widely known or prominent.

175 Cross-examination by Mr. PRITCHARD:

Q. Mr. Evans, how long had you been working on the Birmingham Age-Herald?

A. I went back to Birmingham from Chattanooga, I think it was, the 14th of February.

Q. The 14th of February?

A. I think that is the date, but it was along about the latter part of February or early in March.

Q. This interview occurred on May 28th?

A. Yes, sir.

Q. Where did this interview occur?

A. At the union passenger station.

Q. Where is the office of the Birmingham Age-Herald?

A. It is at 1820 Second avenue, Birmingham, Alabama.

Q. How far from this passenger depot?

A. It is three squares—two full squares and two half squares.

Q. What time does that paper, the Birmingham Age-Herald, go to press?

A. They don't get out but one edition. I think that goes to press at 3.30 in the morning.

Q. When you did work on it, when did you write up your day's work?

A. We get our assignments at two o'clock in the afternoon, and then we go in and write some stuff before supper and some after. The bulk of the stuff is written, say, beginning wih eight o'clock; from eight o'clock on until we get off.

Q. When did you write up this particular story?

176 A. I don't remember whether I wrote that before supper or not.

Q. Where did you write it?

A. At the Age-Herald office.

Q. And you wrote, then, your recollection of what had occurred in the conversation between you and Captain Shipp?

A. Yes, sir.

Q. You did not take it down in shorthand?

A. I did not.
Q. Do you write shorthand?
A. Yes, sir.
Q. But you did not take this in shorthand?
A. No, sir.
Q. These quotation marks do not indicate, then, that you are using his exact phraseology?
A. Not verbatim; no, sir.
Q. Captain Shipp stated to you, among other things, that he had no expectation of any trouble whatever that night, did he?
A. Yes, sir; I think he said that.
Q. And that the first he heard of any mob making an attempt was by a communication from the office of the Chattanooga Times?
A. From the editorial rooms of the Chattanooga Times.
Q. Did he tell you that that communication came from Attorney-General Whitaker?
A. No, sir; I don't think he mentioned the attorney-general's name.
Q. You are here in the city?
A. Yes, sir.

177 Mr. FRITCHARD. That is all I want to ask. I just wanted to find out whether he lives here so that we can recall him.

Dr. HOWARD L. JONES, a witness introduced on behalf of the United States, having been duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Dr. Jones, are you a resident of Chattanooga?
A. Yes, sir.
Q. Are you a minister of the gospel?
A. Yes, sir.
Q. Are you the pastor of a church here?
A. Of the First Baptist Church.
Q. Were you, in March, 1906?
A. Yes, sir.
Q. And in all of 1906?
A. Yes, sir.
Q. Doctor, do you remember the time of the Ed Johnson lynching?
A. Yes, sir.
Q. Do you remember that night?
A. Yes, sir.
Q. What had been the state of the public mind just prior to that time?

Mr. PRITCHARD. I object to that, if the court please, upon the ground that he can state facts and not conclusions, and the state of the public mind is not a fact.

178 The COMMISSIONER. Note the objection.

By Mr. SANFORD:

Q. In the matter of apprehended violence and lynching and the state of the public mind?

A. Do I answer that?
Q. Yes; just answer.
A. I should say the public mind was very much excited.
Q. There was a good deal of tension?
A. Yes, sir.
Q. Doctor, did you hear of the mob that night?
A. Yes, sir; I did.
Q. What time did you first hear of it?
A. I don't think I can state exactly. I should say about half past nine, though I am not perfectly sure of the hour.
Q. How did you learn of it?
A. My brother-in-law came home and stated that he had just come by the court-house and there seemed to be some trouble there.
Mr. PRITCHARD. I object to that, if the court please, because the brother-in-law's evidence would be the best evidence.
Mr. SANFORD. I agree that that answer may be excluded from the record.

By Mr. SANFORD:

Q. Did you go out yourself?
A. Yes; I did. I went down to the jail.
Q. Did you go directly to the jail?
A. I stopped on the way to talk with a policeman.
Q. Did you go to police headquarters?
A. I called up police headquarters on the phone.
179 Q. Then you stopped and talked to a policeman?
A. Yes, sir.
Q. Without going into the details as to what occurred in those conversations, did you secure any police aid in the matter?
A. No, sir.
Q. Did you make an effort to do so?
A. I did; yes, sir.
Q. And failed?
A. Yes, sir.
Q. Did you then go to the jail?
A. Yes, sir.
Q. What did you see when you arrived at the jail?
A. Well, before reaching the jail, when I got to the corner of Walnut street, turning towards the jail, I saw a crowd two blocks away going up the hill. I did not know who they were, but I took it that it was those who were following the mob.
Q. About two blocks away, going over the hill?
A. Yes, sir.
Q. What did you then do?
A. I went down to the jail.
Q. Who did you see?
A. I saw Sheriff Shipp.
Q. Where was he?
A. He was coming out of the jail, down the steps, when I met him.

Q. Was any one with him?
A. I think not.
Q. Was he guarded by anybody?
A. No; not that I know of.
180 Q. Was he in any restraint whatever of his person?
A. I think not.
Q. Did you have a conversation with him?
A. Yes, sir.
Q. State that conversation.
A. I don't know that I can give the exact words of the conversation.
Q. Give the substance.
A. The substance of it was that he told me that the prisoner had been taken and that he had been seized immediately when he went into the jail, and had been unable to do anything; but I suggested to him that we go and try to identify some of the members of the mob. He said that would be a very dangerous thing to do, and a very foolish thing to do; that they were very desperate men. While we were talking a fusilade of shots we heard from the bridge.
Q. You suggested that you follow after them. Was that your suggestion?
A. That was my suggestion.
Q. He said it would be a dangerous and a foolish thing?
A. Yes, sir.
Q. Did you suggest or warn him once only, or more than once?
A. Just once, I think.
Q. Then the fusilade occurred?
A. Yes, sir. Only once I think.
Mr. SANFORD. Take the witness.
Mr. PRITCHARD. The witness may stand aside.

181 CARL J. ROWDEN, a witness introduced on behalf of the United States, having been duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Is your name Carl Rowden?
A. Yes, sir.
Q. Where do you live, Mr. Rowden?
A. 611 Walnut street, Chattanooga.
Q. How close is that to the county jail, Mr. Rowden?
A. I suppose about 25 feet or something like that.
Q. Does the lot upon which your house is placed adjoin the lot on which the county jail stands?
A. Yes, sir.
Q. And about 25 feet is the distance?
A. I suppose the house is about 25 feet from the jail; something like that.

Q. Do you remember the occasion of the lynching of Ed Johnson sometime last March?

A. Yes, sir.

Q. Were you at home that night?

A. Yes, sir.

Q. What first called your attention to the fact that there was anything wrong at the jail, if anything at all?

A. Why, I heard a little noise outside, that is, people walking, and I just walked out to the front porch.

Q. Was that in the direction of the jail?

A. Well, it is right opposite the jail.

Q. What did you find when you went out?

A. I found there was about a dozen people out in front, may be more or less.

182 Q. In front of the jail?

A. In front of the jail and my house together; probably a dozen and a half, or something or another; I don't remember just how many.

Q. What time of night was that?

A. Well, I suppose about half past eight; between half past eight and nine.

Q. From half past eight until nine o'clock?

A. Yes, sir.

Q. Did you hear any noise going on about the jail? If so, what?

A. No, sir; I didn't hear any noise at all. I just stepped out and asked somebody what was the matter, and they said it looked like there was going to be a mob there. That was all.

Q. Did you go out to the jail and see what was the matter?

A. No, sir; I did not. I went out to the sidewalk, right to the edge of the sidewalk.

Q. How long did you remain out there?

A. Well, off and on for an hour, I guess, or half an hour; something like that.

Q. Did you stay there until the crowd left the jail?

A. I stayed on my porch and in the yard, together.

Q. How long was it from the time you first went out until the crowd left the jail and went in some direction?

A. I suppose it was probably about an hour, or something or another like that—an hour and a half.

Q. An hour to an hour and a half? That is your judgment

183 about it?

A. Yes, sir; an hour to an hour and a half. I couldn't say for positive.

Q. During that time, so far as you could see from the distance you were from the jail, what was going on over there?

A. It seemed as though they was trying to get the prisoner.

Q. By what did you judge that they were trying to get the prisoner?

A. I heard the noise.

Q. What sort of a noise?
A. Hammering of some kind.
Q. What did it sound like?
A. It sounded like someone beating on a piece of iron.
Q. With a sledge hammer or ax, or something of that kind?
A. I couldn't tell whether it was a sledge hammer or an ax.
Q. Did it make such a noise as that?
A. It made such a noise as one or the other of those would make.
Q. Were you in the crowd that surged around there at any time, either of the men who were in the jail trying to get in, or the crowd that was gathered around?
A. No, sir; I was not; only the crowd that came in my yard and on my porch.
Q. Were there several who came in there?
A. Yes, sir; there was quite a good many.
Q. Did you know any of them?
A. Well, I knew a few of them, two or three—something like that.
184 Q. Can you give the names of any whom you knew at that time?
A. I think Mr. Hugh Fry was there, and Mr. Ed. Snodgrass, and John Head was around there. I don't know whether he was in the yard altogether or not. He was around *v*here.
Q. John Head?
A. Yes, sir.
Q. Who are those men, and where do they live? Where does Mr. Head live?
A. I don't know. He lives in the city somewhere. I couldn't tell you where.
Q. What business does he follow?
A. I think insurance and real estate.
Q. What about Mr. Snodgrass?
A. I think he is engaged in the lumber business, or connected with it in some way.
Q. He is a business man here in the city?
A. Yes, sir.
Q. Who else? Hugh Fry, you say?
A. I think Mr. Hugh Fry was there; yes, sir.
Q. Where does he live—here in the city?
A. I think he lives here in the city; yes, sir.
Q. Did anybody come into your house for any purpose? If so, what?
A. There was a couple came in there and asked me to telephone—that is, Mr. John Head was one of them, and the other party I didn't know. He was a stranger to me.
Q. Do you know to whom they wanted to telephone?
A. No, sir; I do not. I didn't hear them telephone.
Q. Did you hear the conversation that went on at the telephone in your house?

185 A. No, sir; I did not.

Q. You do not know what was said?

A. No, sir; I was on the porch and they were in the house, inside.

Q. Did you know any of the men at all in the jail or the jail yard about the jail?

A. Did I know any of them?

Q. Yes.

A. I don't remember of seeing or knowing any of them except the parties I spoke of.

Q. They were in your yard and at your porch, as I understand?

A. Mr. Head was over in the jail yard, and I think Mr. Johnson was over there.

Q. Which Johnson?

A. I think he is a clerk at the Read House, I beli've—Oliver Johnson.

Q. Did you follow the crowd down the way they went after they got the prisoner?

A. No, sir; I did not.

Q. Did you see them as they cane out?

A. Yes, sir.

Q. Did you see the colored man, Ed Johnson?

A. Yes, sir.

Q. State whether or not anybody had hold of him?

A. I couldn't say. I think some one had hold of his arm. I am not sure. I am not positive about that. I guess they did, though.

Q. How close did they pass to you, Mr. Rowden?

A. I was standing on my porch, and they went right out the jail door, right out the entrance.

186 Q. About how close? Four or 5 feet feet?

A. No; it is 25 or 30 feet, I suppose.

Q. Were there street lights, arc lights, there?

A. There were lights in front of the jail that they have there, the electric lights.

Q. Could you see the faces of people well enough to tell features?

A. No, sir; I couldn't recognize any of them.

Q. Nobody in the crowd that you knew?

A. No, sir.

Q. Did you see anybody with arms there?

A. I seen one gentleman, one man, with arms. He had a mask on his face, though, the one I saw.

Q. Is that the only man you saw with a mask on his face?

A. You mean with arms? No; I saw a good many men there.

Q. With masks?

A. No; just only one with a mask.

Q. That is what I say. Is that the only one that you saw with a mask on his face?

A. That is the only one I noticed; yes, sir.

Q. Is that the only man you saw with arms?

A. Yes, sir.

Q. What was the weapon he had? Was it a gun or pistol?

A. It looked like a Winchester, I believe, to me. I couldn't tell at the distance.

Q. Did you see any deputy sheriffs there?

187 A. No, sir; not that I recognized. I didn't recognize any if I saw them there.

Q. Did you see any policemen there?

A. No, sir; I didn't notice any policemen.

Q. Did you see Sheriff Shipp there?

A. No, sir; I didn't see Sheriff Shipp.

Q. You did not see any officers at all that you recognized as such there that night?

A. Not at that time, except later on.

Q. After the crowd left?

A. Yes, sir.

Q. Who came up after the crowd left, if anybody?

A. Mr. Frauley was there after the crowd left.

Q. Was he a deputy sheriff?

A. I suppose he is. I understand he is Sheriff Shipp's deputy.

Q. State whether or not you had ever seen him there at the jail.

A. Yes, sir; I had often seen him there.

Q. State whether or not it was the custom for him and other deputies to stay there at night.

A. It is the custom to see them around there. I would see them around there quite often at night; most any time at night.

Q. Almost any time of night?

A. As long as I am up; up until ten or eleven o'clock.

Q. Do you know whether or not some of them slept in the jail ordinarily?

A. No, sir; I do not.

Q. Still you had seen them there at different times during the night?

188 A. At different times during the night, up until ten or eleven o'clock at night.

Q. State what deputies you were accustomed to see about the jail at night. Give the names of them. For instance, Mr. Frauley? He is one.

A. I don't know a good many of the deputies; that is, only just a few of them.

Q. Give those you may know.

A. I don't know whether I have saw all I know around there or not at times.

Q. Just answer the question as best you can. State those you have seen there.

A. I have seen Mr. Joe Richardson there and Mr. Frauley.

Q. Taylor?

A. I don't know Mr. Taylor.

Q. Do you know Joe Shipp?

A. Yes; I know Mr. Shipp.

Q. State whether or not you saw him a good deal about the jail.
A. Yes, sir; I saw him there quite a good deal.
Q. Mr. Baker. You saw him there a good deal?
A. I don't know Mr. Baker.
Q. George Brown?
A. George Brown; yes, sir.
Q. He was the day jailer, was he not?
A. I think he was the day jailer at that time; yes.
Q. Did he live in some part of the jail building, the residence part of it?
A. I think he lived upstairs. I think he occupied the upstairs.
Q. He kept his family there?
189 A. Yes, sir.
Q. Do you remember seeing him there on the day before the lynching occurred that night?
A. No; I don't believe I did.
Q. Do you know whether his family was in there that night or not?
A. No; I couldn't tell you that either, whether they were or not.
Q. Did you go over into the jail at all, either before or after or during the trouble there that night?
A. No, sir; I did not.
Q. Did you see Sheriff Shipp there after the crowd left? Did you see him when he came down, if he did come down, out of the jail and about the yard or street there near it?
A. No, sir; I did not. I didn't see Captain Shipp at all that night.
Q. You did not see him at all?
A. No, sir.
Q. Neither did you see any effort made on the part of any official to quell any disturbance there on that occasion?
A. Well, not on the outside, I didn't. I don't know what they did on the inside.
Q. Did you hear any alarm bell ring that night?
A. No, sir; I didn't hear it.
Q. Did you hear anybody try to raise a posse on the outside to protect the jail? Did you see anybody try to keep the jail from being broken into?
A. No, sir; I did not.
Q. You heard nothing of that kind?
190 A. No, sir.
Q. The crowd that went into the jail met with no resistance so far as you know.
A. Not so far as I know; no, sir.
Q. You say you did not know the deputy sheriff, Taylor?
A. No, sir; I don't know him.
Q. Do you know Joe Clark, a deputy?
A. No, sir; I don't know him.
Q. Did you know Deputy Sheriff Galloway?
A. I know Mr. Galloway when I see him; yes, sir.

Q. State whether he was accustomed to being about the jail a good deal.

A. I would see Mr. Galloway around there quite often; about as often as any of the rest of the deputies.

Q. Did you see him there that night?

A. I didn't recognize him if I did.

Q. You did not see any deputy there that night?

A. Not to recognize them.

Q. Not a single one?

A. No, sir.

Q. You say you did not know the man with the Winchester?

A. No, sir; he had some kind of a mask on.

Q. What was it? How was his face masked?

A. Well, it looked to me like a handkerchief over his face. I couldn't tell.

Q. The lower part?

A. It looked to me like from here down [indicating].

Q. Did it cover his eyes?

A. I think it did; yes.

191 Q. Did he have holes cut in it?

A. Yes; I think so.

Q. That is the way you understood it?

A. Yes, sir.

Q. A handkerchief with mouth and eye holes cut in it?

A. Yes, sir.

Q. Of course, that being so, you could not tell faces?

A. No, sir.

Q. Did anybody do any loud talking there that night during that effort to get into the jail?

A. No; I didn't hear any.

Q. Did you hear any voices that you recognized over there in that crowd?

A. No, sir; I did not.

Q. They did not have much talk?

A. They didn't have much talk. It was pretty orderly.

Q. All work and no talk. What kind of a looking man in general appearance was the man with a Winchester—a large man or a small man? Were there any peculiarities about him in any way, would you say?

A. He looked to be a man about six-foot tall. He weighed about 175 pounds, maybe, or something like that, or 200.

Q. Could you tell anything about his features, the color of his hair, or anything of that kind?

A. No, sir.

Q. Nothing of that sort?

A. No, sir.

Q. Or whether he had a beard or not?

192 A. No, sir.

Cross-examination by Mr. PRITCHARD:

Q. Of course, Mr. Rowden, did you not make it your business to notice every deputy who came there by day or by night?

A. No, sir.

Q. You just lived near there?

A. I just lived near there.

Q. You had just casually observed them at different times?

A. Yes, sir.

Q. You did not even have a personal acquaintance with more than two or three deputies?

A. I think with two or three, or three or four, or something like that.

Q. You do not pretend to have seen them every night?

A. No; not every night.

Q. Just occasionally you would see them in there, because that was the headquarters where they would drift in and drift out?

A. Yes, sir.

Q. You say you live how far from the jail?

A. I guess our house must be 25 or 30 feet; something like that.

Q. Right at the jail?

A. Right at the jail; yes.

Q. Do you not remember the exact time you heard the crowd there?

A. No, sir; I don't.

Q. You did not look at any timepiece?

193 A. I didn't look at any timepiece.

Q. It is the merest guess on your part as to the time?

A. Yes, sir.

Q. There is nothing definite in your mind about that at all?

A. No, sir.

Q. You knew when you heard that noise, or you assumed, that that was a mob, did you?

A. That is what I assumed.

Q. And you assumed that they were going in there to kill a man?

A. I didn't know what they were going to do with him.

Q. But that was your assumption, that that was what they were going to do?

A. Yes.

Q. It was a very quiet affair, was it not?

A. Yes.

Q. These gentlemen whose names you have called and other gentlemen you saw around there, none of them seemed excited about it?

A. No; they were all spectators like myself.

Q. All just casually interested in the performance?

A. Yes.

Q. And you sounded no alarm?

A. No, sir.

Q. You did not call on the public to interfere in the matter?

A. No, sir.

Q. You did not order the bells rung?

A. No, sir.

Q. You did not interfere yourself?

194 A. No, sir.

Q. You saw no one there offering to interfere?

A. No, sir.

Q. You saw no one there making the slightest effort to alarm the city and draw a crowd there or go to the officers' rescue, if the officers were attempting to protect the prisoner?

A. No, sir.

Q. You saw nothing of that sort?

A. No, sir.

Q. You saw no one there who showed the slightest inclination to help the prisoner or interfere with the mob?

A. No, sir.

Q. You did not see the sheriff when he went in there?

A. No, sir; I did not.

Q. Neither you nor anyone else that you saw there made the slightest effort, so far as you know, to go in there and rescue the officers who were on the inside, did you?

A. No, sir.

Q. Or to interfere with the action of the mob in taking the prisoner from the officers on the inside?

A. No, sir.

Q. You saw no one who exhibited any inclination to do that?

A. I did not.

Q. Or any disposition to want that done?

A. No, sir.

Q. You saw no one who seemed to want that done?

A. No, sir.

195 Mr. PRITCHARD. That is all.

Mr. SANFORD. I suggest that an adjournment be taken now until to-morrow morning.

The COMMISSIONER. If it is agreeable to counsel, we will adjourn now until to-morrow morning at ten o'clock.

The hearing, at 3.35 o'clock p. m., was adjourned until Thursday, February 14th, 1907, at ten o'clock a. m.

196 CHATTANOOGA, TENNESSEE,
February 14th, 1907.

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., commissioner; Messrs. Edward T. Sanford and James P. Penland, on behalf of the United States, and counsel representing the respective defendants.

DAVID R. WALKER, a witness produced on behalf of the Government, and after being duly sworn according to law by the commissioner, testified as follows:

By Mr. SANFORD:

Q. You live in Hill City, a suburb of Chattanooga?

A. Yes, sir.
Q. Your business?
A. Constable.
Q. For how long have you been a constable?
A. This is my fifth year.
Q. Does your business take you around the county jail?
A. Yes, sir.
Q. How much?
A. Quite a good deal sometimes.
Q. Do you ever go there at night?
A. Yes, sir.
Q. Do you remember the night of the lynching of Ed. Johnson?
A. Yes, sir.

Q. Had you been around the jail at any time at night
197 before that event?

A. Yes, sir.
Q. How often, and when did you go around there?
A. Well, I could not say just how often, but I was there quite often.
Q. How often a week would you be there?
A. I was there, I guess, from one to two or three times a day and night.
Q. How often would you go there at night?
A. I say day and night.
Q. Had there been any excited state of public feeling at the time of the Ed. Johnson trial? Had there been any mobs in Chattanooga? Any attempt to lynch any prisoners before this time?
A. Yes, sir.
Q. When was the first mob, if you remember?
A. Why, I don't really remember the date.
Q. Was it in February or January?
A. February, I believe, wasn't it? I don't remember that date.
Q. You don't remember the date?
A. No, sir.
Q. Do you remember what prisoners were in jail at the time of the first mob?
A. There was Ed. Johnson. Of course, I don't know the prisoners that were in jail, but I know the prisoners there that seemed to create the most excitement were Johnson and Westfield.
Q. Floyd Westfield?
A. Yes, sir.

Q. And the mob was after them, is that what you mean?
198 A. They were the prisoners, I believe.

Q. How long was this mob after the Ed. Johnson arrest? How many days?
A. You mean the first mob?
Q. Yes, sir; the first mob.
A. I don't remember that.
Q. Was it soon after his arrest or a long time?

A. I couldn't say. It wasn't long, though. I don't remember how long that could have been.

Q. Was Johnson in the jail or did the sheriff take him away or get him away before that?

A. My understanding was that Johnson had been taken away.

Q. Was the mob dispersed?

A. Yes, sir.

Q. Then during Johnson's trial, did the excitement keep up?

A. Why, there was some considerable excitement about; yes.

Q. Were any precautions taken during that time to prevent an outbreak?

A. That is my understanding; yes, sir.

Q. Did you see any precautions taken or any extra guards anywhere?

A. Yes, sir.

Q. Anywhere about the jail?

A. Yes, sir.

Q. What were those precautions? What kind of extra guards did they have and where?

A. Well, during a part of that time there was, if I am not mistaken, some extra policemen about there, and deputies.

199 Q. Extra policemen at the jail?

A. And deputies; yes, sir.

Q. And deputies?

A. I think so, during a portion of this excitement. I don't know just what time or the date.

Q. Any extra deputies? Do you know how that was?

A. I think there was.

Q. Then when Johnson had been brought back from Knoxville after he had been taken up there before Judge Clark, the week before he was lynched, were you at the jail at all at night during that week?

A. Yes, sir.

Q. How often were you at the jail that week?

A. I could not state just now how often I was there, though quite often along during the day and night.

Q. Quite often?

A. During the day and night; yes, sir.

Q. Was it the habit of the deputies to leave the jail at night or did any of them stay there at night?

A. I always found some of them there when I was there.

Q. What jailers, if any, were in the habit of being there at night?

Mr. PRITCHARD. Deputies, you mean.

Mr. SANFORD. Deputies, I mean. Excuse me. What deputies?

A. I remember Mr. Baker and Frank Jones and Joe and John Shipp. Joe and John Shipp, and the jailer, Mr. Gibson, was there. I believe he was the night jailer, and Mr. Frauley.

Q. Mr. Frauley?

A. Yes, sir.

200 Q. You say you remember them. What do you mean by that? You remember what?

A. I would usually see that gang there at night.

Q. How late would they be there at night, usually?

A. I could not say just how late. I have seen them there from—oh, I would be in town from nine until eleven o'clock and sometimes twelve, but not later than ten or eleven, usually.

Q. Would they be there at that hour when you would go down?

A. Yes, sir; I have seen them there.

Q. I mean as a customary thing.

A. During that time, I think so; yes, sir.

Q. What do you mean by during that time?

A. During that week.

Q. Oh, yes, sir; during that week.

A. You asked me about that.

Q. And had they been in the habit of staying there before that week and particularly during that last week after Johnson came back from Knoxville?

A. During all this excitement there was quite a crowd at the jail all the time. That was my observation of it.

Q. When you say "during all this excitement," what do you mean by that? What do you mean by "this excitement?"

A. Since the first mob, and before that.

Q. What was the excitement about that you referred to?

A. The excitement or fear as to those prisoners.

Q. What fear?

A. As to those prisoners being taken.

Q. Being taken by whom? How taken?

A. Being guarded, rather.

201 Mr. PRITCHARD. I object to this statement of the witness attributing it to fear, which would be merely a feeling, and perhaps was not communicated to anybody, unless he knows the feelings of other individuals which were not communicated to him.

The COMMISSIONER. Note the objection.

Mr. SANFORD. My question was what was the excitement he referred to and he said the excitement was the fear about the prisoners. I was asking what fear he meant.

A. I mean during that period. I don't know of any particular fear. I mean during that period of time.

Q. You say that was a period of excitement?

A. Yes, sir; I think so.

Q. What I am trying to get at is what that excitement was about. What was that excitement? What was it about? What caused it?

A. Well, those two prisoners.

Q. And you mean the excitement about those two prisoners?

A. Yes, sir.

Q. And during that excitement you say it had been the custom to find extra deputies there? I mean these deputies there at the jail during that period of excitement.

A. There was usually more or less of a crowd there. I was there very often myself.

Q. And that was so, as I understand you, during this last week after Johnson came back from Knoxville?

A. Yes, sir; I think so.

Q. Did your business take you there at night as a constable? Did you have to go there?

202 A. Yes, sir; it very often did, and probably at other times I would just drop in.

Q. Were you on friendly terms or unfriendly terms with the deputies.

A. Friendly terms.

Q. Mr. Walker, do you know Deputy Sheriff Brown?

A. Yes, sir.

Q. Was he then deputy sheriff?

A. Yes, sir.

Q. What was he?

A. He was the day jailer, I believe.

Q. Where did his family live at that time?

A. They lived up over the jail, I believe.

Q. On the second floor of the jail?

A. Yes, sir.

Q. Do you know where he was and where his family was that night?

A. No, sir; I did not know at that time.

Q. You did not know at that time?

A. No, sir; I did not know at that time.

Q. Were you there that night?

A. No, sir; I passed there.

Q. You were not there that night yourself?

A. No, sir.

Q. Do you know whether Mr. Jones was a deputy at that time?

A. Yes, sir.

Q. Do you know what Mr. Taylor's duties were?

A. Mr. Taylor, I understand, was a deputy and electrician or engineer at the power house.

Q. Did he exercise the usual duties of a deputy, or did

203 he merely attend to the electricity? How was that?

A. I think both, to my understanding.

Q. Both, you say?

A. Yes, sir.

Q. Did you see him in the discharge of the regular duties of a deputy?

Mr. STANFIELD. I want to note an objection to what the witness understands.

Mr. SANFORD. I would like to have the witness state what he saw.

Mr. STANFIELD. What I am objecting to is what the witness understands, what he does not know of his own knowledge.

Q. (By Mr. SANFORD.) What do you mean by understand? State what you saw; whether you saw him discharging the general duties of a deputy or whether you did not.

A. I did.

Q. You did see him discharging the regular duties of the deputy?

A. As to executing papers—to that extent. I don't know that he did.

Q. What did you see him do? Just state facts and what you saw.

A. I don't know, hardly. I could not probably recall that. I don't know. I have probably seen him as a turnkey.

Mr. PRITCHARD. I object to the probabilities; that he probably saw him turning a key.

Mr. SANFORD. I asked him what he saw.

Mr. PRITCHARD. I understand your question, but I am
204 objecting to the manner in which the witness is answering the question. It did not call for an answer of that sort.

Q. (By Mr. SANFORD.) Just try to give us your recollection as to what you saw as to what Mr. Taylor was doing around the jail when you saw him there. That is the question. Would he stay with the other deputies or not?

A. Yes, sir.

Q. During the time of this excitement, when you say the deputies were staying at the jail, was or was not Mr. Taylor staying there with them at any of these times?

A. He was there most of the time. I don't remember that he was there nights. I don't recall any particular duties.

Q. Would he be armed when you would see him at the jail?

A. I don't know that I ever saw him armed.

Q. Did you ever see him have the custody of prisoners, having the keys?

A. Yes, sir.

Q. The turnkeys?

A. I have.

Q. Have you seen that?

A. I have, I think.

Q. Once or more than once?

A. Why, more than once, I guess.

Q. Were you present at the jail at any of the times when it was attacked?

A. No, sir.

Q. When there was a mob?

A. No, sir.

205 Q. Do you know anything about any Winchesters at the jail; when they were obtained; if there were any extra Winchesters?

A. There was a show case, or case, kept there for the purpose of keeping guns in. It was stationary. I suppose it is there all the time.

Q. Do you know whether or not they got any extra Winchesters?

A. I do not.
Q. You do not know about that?
A. No, sir.
Q. Do you yourself know anything about the mob that lynched Ed. Johnson; who was in it?
A. No, sir.
Q. Did you see it?
A. No, sir.

Cross-examination by Mr. PRITCHARD:

Q. The Joe and John Shipp to whom you refer as having been sometimes around the jail, Mr. Walker, are sons of Captain Shipp?
A. Yes, sir.
Q. And by Joe Shipp you do not mean the defendant, Joseph F. Shipp?
A. No, sir.
Q. You are a constable for the third civil district of Hamilton County?
A. Yes, sir; the new second, at present.
206 Q. This district in which the jail is situated is the first civil district, formerly the fourteenth?
A. Yes, sir.
Q. It includes the city of Chattanooga?
A. Yes, sir.
Q. And the district for which you are constable is north of the river, on the opposite side or the river from Chattanooga?
A. Yes, sir.
Q. You spoke of extra officers being engaged around the court-house during the trial of Johnson. Those trials and trials of like character very frequently have a large attendance of people, do they not?
A. Yes, sir.
Q. They are capital cases on trial?
A. Yes, sir.
Q. And on those occasions, for the purpose of preserving order in and around the court room, it is customary, is it not, to have more deputies in service than on ordinary occasions during the trials of the civil docket and misdemeanor cases, and the like?
A. Yes, sir.
Q. Is not that the fact?
A. Yes, sir.

Redirect examination by Mr. SANFORD:

207 Mr. Walker, you say that sometimes in the capital cases there were more deputies than usual. Was the number of deputies and guards at the Johnson trial of the character that you have refered to, or were they still more in number than is usual even in ordinary capital cases?
A. I think they were.

Q. Do you know? How is that?
A. More than I had seen usually; yes, sir.
Q. Is it usual in the ordinary capital case to have policemen deputized to guard the jail at night?
A. How is that?
Q. Is it usual in the conduct of the ordinary capital case in this county to require the deputizing and calling of policemen as special deputies to guard the jail at night? Has that been usual in Hamilton County?
A. No; I don't know as that is the fact.
Q. If it is true that the militia have been called out twice, in January and February of that year, by the governor, is that a customary occurrence in the county?
A. No, sir.

JULIA WOFFORD (colored), a witness produced on behalf of the United States, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. What is your name?
A. Julia Wofford.
208 Mr. PRITCHARD. I ask, if the court please, in order to avoid the questions, that the stenographer shall show the complexion of the witness.
The COMMISSIONER. That may be done.
Q. (By Mr. SANFORD.) You live in Chattanooga?
A. Yes, sir.
Q. What is your age?
A. Twenty-six.
Q. What is your occupation?
A. Cooking.
Q. Did you ever cook for the defendant, Captain Shipp?
A. Yes, sir.
Q. When?
A. Well, I cooked for him twice—one year before last and then last year, along about February and March, along in there. I quit in March.
Q. Are you now in his employment?
A. No, sir.
Q. Have you been since last March?
A. Not since last March.
Q. Did you ever hear Captain Shipp say anything in reference to any delay in the proceedings in the Ed Johnson case? If you did, just state what you heard.
A. I heard him say one day at the dinner table that if the execution would be stayed Ed Johnson would be mobbed.
Q. When was that?

209 A. That was the week after they had gone to Knoxville and had had their trial, and was waiting for the hearing.

Q. Waiting for what hearing?

A. From the supreme court.

Q. Was it before or after they had gone to Knoxville?

A. It was after they had gone to Knoxville.

Q. How many days after they had gone to Knoxville?

A. They was in Knoxville on a Saturday, and this was one day the next week. I don't know exactly what day it was, but it was one day the next week.

Q. One day the next week?

A. Yes, sir.

Q. Did you hear Captain Shipp, on the day that Ed Johnson was lynched, say anything in reference to whether the supreme court had taken any action or not? If so, state what he said, and the time.

A. I heard him tell his wife that afternoon that he was going to get a hearing—he would get a trial, or something like that. I don't know exactly the words.

Q. That who was going to get a hearing?

A. That Ed Johnson was.

Q. Did he state in what court?

A. No, sir. I was just passing through the room, and I just heard him say, "Well, Ed Johnson got a hearing."

Q. That was in the afternoon?

A. That was Monday.

Q. You stated the time?

A. That was Monday evening, and Ed Johnson was
210 mobbed that night.

Q. When you say "evening," what do you mean—afternoon or what?

A. I mean from 2 o'clock on, between then and 5. That is what I call evening.

Q. Some time between 2 and 5 in the afternoon?

A. Yes, sir.

Q. Did the Captain stay at the house after that time or did he leave, do you know?

A. He left then, but when I came back to cook supper he was at home.

Q. Do you know how long he stayed?

A. Well, he stayed there from then on until after supper, and I left him there.

Q. About what time did you leave after supper?

A. Between 7 and 8 o'clock.

Q. He was still there?

A. Yes, sir.

Cross-examination by Mr. PRITCHARD:

Q. What did you say your name is?

A. Julia Wofford.
Q. What do you do now?
A. I cook.
Q. Where?
A. Where?
Q. Yes; where?
A. For J. B. F. Lowry.
211 Q. Mr. J. B. F. Lowry is employed in the Citizens Bank?
A. Yes, sir.
A. Yes, sir.
Q. That is the man you cook for?
A. Yes, sir.
Q. Where does he live?
A. He live 325 Vine.
Q. How long have you been cooking for Mr. Lowry?
A. I have been there ever since November, but I have been cooking off and on for him for four years.
Q. You have been there since November?
A. Yes, sir.
Q. And cooking for him off and on for four years?
A. Yes, sir.
Q. How long did you cook for Captain Shipp?
A. I cooked for him, the last time I was there, about two months.
Q. When did you leave?
A. I left there the week they lynched Ed Johnson.
Q. The same week?
A. Yes, sir.
Q. Before Ed Johnson was lynched or afterward?
A. After he was lynched.
Q. What day did you leave?
A. On Saturday.
Q. Did you tell him you were going to leave?
A. No, sir.
Q. You just pulled up and left?
A. Yes, sir.
212 Q. That is the way you generally do, is it?
A. No; that ain't the way I always do. I never did it before.
Q. You say you heard two conversations about this matter. The first time was when you heard Captain Shipp say at the dinner table something about it. What was it he said about it at the dinner table?
A. He said at the dinner table if Ed Johnson's execution would be stayed he would be mobbed.
Q. What?
A. That if Ed Johnson's execution would be a stay, or something like that, he would be mobbed.
Q. What would be done about it?
A. He would be mobbed.
Q. If his execution would be what?
A. Stayed.

Q. What do you mean by that?
A. He meant if he got a trial.
Q. Got a trial where?
A. In the Supreme Court.
Q. In what Supreme Court?
A. Of the United States. I don't of but one.
Q. There is not but one, is there?
A. No, sir.
Q. That is what he was talking about?
A. Yes, sir.
Q. Did he say the Supreme Court of the United States?
A. You say did he say that?
Q. Yes.
213 A. He said, if the execution would be a stay——
Q. Who put these words in your mouth about a stay of execution?
A. There didn't anybody put those words in my mouth.
Q. Did you ever hear or know anything about a stay of execution?
A. There was something in the paper that way.
Q. You read it in the paper instead of hearing Captain Shipp say it, did you not?
A. No, sir; I hear him say it.
Q. Or you talked it over with somebody? Who did you hear say that?
A. I didn't talk it over with no one.
Q. Who did you talk it over with?
A. No one.
Q. You never talked it over with anybody?
A. No, sir.
Q. Did you tell anybody you knew this?
A. I told the neighborhood I knew it.
Q. Did you tell anybody else besides the neighbors?
A. Yes; I told Mrs. Lowry.
Q. Who else did you tell?
A. I didn't tell nobody else but the neighbors and Mrs. Lowry.
Q. You did not tell anybody but Mrs. Lowry?
A. Yes, sir.
Q. That is Mrs. J. B. F. Lowry?
A. Yes, sir.
Q. When did you tell Mrs. Lowry?
214 A. I told her after the mob.
Q. How soon afterwards?
A. Oh, well, I don't know exactly how soon it was. It was sometime in that week afterwards.
Q. Sometime during that same week?
A. Yes, sir.
Q. Did you go immediately from Captain Shipp's to J. B. F. Lowry's house to cook?
A. No, sir.

Q. When did you go to Mr. Lowry's?
A. I went there to work on a Monday.
Q. The following Monday?
A. Yes, sir.
Q. The Monday after you quit at Captain Shipp's?
A. Yes, sir.
Q. You quit at Captain Shipp's on Saturday and you went to Mrs. Lowry's on Monday?
A. Yes, sir.
Q. And it was that week you told Mrs. Lowry about that?
A. Yes, sir.
Q. Where was Mrs. Lowry when you told her that?
A. She was at home.
Q. Where; what particular place?
A. Upstairs in her room.
Q. Upstairs in her room?
A. Yes, sir.
Q. What did you say to Mrs. Lowry?
215 A. She asked me what did they say over there about the mob. I said, "Well, they ain't saying anything now." She asked me had they said anything. I said, "Well, a good while ago Captain Shipp said if the execution would be a stay Ed Johnson would be mobbed."
Q. A good while ago?
A. Yes, sir.
Q. Why did you tell Mrs. Lowry that the conversation occurred a good while ago?
A. Well, it was that next week when it occurred.
Q. But why did you tell Mrs. Lowry that the conversation occurred a good while ago, when the conversation had occurred immediately before? Why did you tell her that?
A. You say why did I tell her?
Q. Yes; why did you tell Mrs. Lowry?
A. I meant the next week when it occurred.
Q. The next week?
A. The week before he was mobbed.
Q. Did you tell Mrs. Lowry that the conversation occurred a good while ago, or did you tell her it occurred immediately before the mobbing?
A. No, sir; I told her a good while ago.
Q. Why did you tell her it was a good while ago?
A. Because it was the week before that.
Q. You know it was not a good while ago, according to your present story, do you not?
A. That is what I told her.
Q. Why didn't you tell her that?
A. I meant it was the week before then.
216 Q. You meant the week before?
A. Yes, sir.

Q. And that is what you meant by a good while ago? Did you tell her you had two conversations with Captain Shipp, or that you overheard two conversations?

A. I didn't tell her I had any. I told her I heard that. I didn't tell her I heard but one.

Q. Did you tell her you heard it from Captain Shipp?

A. Yes.

Q. Did you tell her you heard it at the dinner table?

A. Yes, sir.

Q. You told her just as you have told it here?

A. Yes, sir.

Q. And Mrs. Lowry is the only person to whom you have ever mentioned this?

A. The only white person.

Q. Who else? What colored person?

A. I told Mary Curry, that lives next door.

Q. Who?

A. Mary Curry, that lives next door to me.

Q. Who else?

A. I told my brothers.

Q. Who else?

A. I think that is about all I told.

Q. You never told any representative of the Government, or any person who was looking for testimony about it at all?

217 A. No, sir.

Q. He was sitting at the dinner table, as I understand your statement?

A. Yes, sir.

Q. Who else was at the dinner table?

A. There was Mr. and Mrs. Hardin, and Mr. and Mrs. Myer, and Mrs. Shipp and the Captain.

Q. What Mr. Hardin?

A. Mr. Sam Hardin.

Q. And Mrs. Hardin, Mr. Sam Hardin's wife?

A. Yes, sir.

Q. Who else?

A. And Mr. and Mrs. Myer.

Q. Is that Mr. Myer, the jeweler?

A. Yes, sir.

Q. And his wife?

A. Yes, sir.

Q. Now, who else?

A. And Mrs. Shipp.

Q. Mrs. Shipp, the wife of Captain Shipp?

A. Yes, sir.

Q. Captain Shipp's wife?

A. Yes, sir.

Q. What day did you say that occurred?

A. I didn't say exactly what day.

Q. Tell us as near as you can.

A. I know it was one day in the week. I don't know exactly what day, but it was the day after they had gone to Knoxville and
218 come back. I don't know exactly what day.

Q. The day after they had gone to Knoxville?

A. They went to Knoxville on a Saturday, and they came back Sunday, and it was one day in the next week.

Q. It was the day they went to Knoxville?

A. No, sir; it was not the day they went to Knoxville.

Q. The day after they went to Knoxville?

A. No, sir; because it was on a Sunday after they had gone, but it was in the next week.

Q. You say they went to Knoxville on a Sunday?

A. No, sir; they went to Knoxville on a Saturday. At least Captain Shipp came back Sunday.

Q. He came back Sunday?

A. Yes, sir; and it was one day in the next week.

Q. One day in the week following that Sunday; that is, counting Sunday as the first day of that week? Is that it?

A. Yes, sir.

Mr. PRITCHARD. That is all for the present. We do not want this witness discharged.

Mr. SANFORD. Do you want her to stay at the court?

Mr. PRITCHARD. I think she had better stay.

219 FRED SMITH (colored), a witness produced on behalf of the United States, being duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Do you live in Chattanooga?

A. Yes, sir.

Q. What part?

A. East Chattanooga.

Q. How long have you been living here?

A. I have been living here thirty years.

Q. What is your business?

A. Lumber inspector.

Q. For what company?

A. D. W. Hughes Central Manufacturing Company.

Q. Did you see anything of the mob that lynched Ed. Johnson?

A. The night of the mob I was coming up 6th street and got to Walnut, and I happened to discover some men over there around the jail. Well, I pulled my coat up over my head as far as I could and pulled my hat over my eyes. I knowed I had no business there; and I was afraid somebody might do me damage, and as the crowd got larger I kept backing back from it.

Q. That was on account of your color?

A. It was on account of my color. I knowed I didn't belong there.

Mr. PRITCHARD. I object to the statement about the color.
220 The gentleman put the words in the mouth of the witness.

The COMMISSIONER. Note the objection.

Mr. SANFORD. I withdraw the question and the answer.

Mr. PRITCHARD. We have 20,000 of them here in Chattanooga.

Mr. SANFORD. I withdraw the question and answer, both. Let them be considered as withdrawn.

Q. (By Mr. SANFORD.) You pulled up your coat, you say. What coat was that?

A. This overcoat I have got on now.

Q. How did you draw it up? Just illustrate.

A. I had it buttoned up, and I drew my hat down over my eyes.

Q. That is an overcoat with a collar of how many inches? Three and a half or four inches? It comes up to the bottom of your ears, does it?

A. Yes, sir.

Q. It is a large collar?

A. Yes, sir.

Q. Then what else did you do to keep——

A. From being discovered?

Q. Yes. Whatever you did. I do not want to suggest to you.

A. Whenever I would see any whites, I just kept backing back in the dark. I kept the dark between me and them as much as possible.

Q. How about your hat?

221 A. I had my hat down over my eyes, just as low as I could get it.

Q. What kind of a hat did you have?

A. This old hat right here.

Q. What is that? A slouch hat?

A. Yes, sir.

Q. How long were you around there?

A. It was something after nine, I guess, when I got along there; and I stayed around there until I seen the crowd start to the bridge over Walnut street. Then I followed along in the dark to 4th street, and when I got to 4th street I stopped. I knowed my journey was as far as I had any business going. Then I went up to the corner of 4th and Georgia avenue and caught the car to go home.

Q. You got there something after 9 o'clock?

A. Yes, sir.

Q. Did you see Sheriff Shipp at any time?

A. No, sir.

Q. Did you know Sheriff Shipp?

A. Yes, sir.

Q. Did you see him go in the jail?

A. No, sir. I have knowed the sheriff for over twenty years, when he was in the Shipp and Temple furniture business. I had no acquaintance with him, but I knowed him.

Q. Never mind; you did not see him?

A. No, sir.

Q. That is the point. How long were you around there altogether?

222 A. I guess it was something after ten o'clock, as near as I can guess at it. I had no watch.

Q. How long were you there? I do not want the time.

A. At the jail?

Q. Yes; in front of the jail.

A. I guess it may have been right up to an hour or a little over.

Q. Close to an hour?

A. Yes, sir.

Q. Where were you standing during this time?

A. Across the street, in front of the court-house gate.

Q. How far was that from the court-house gate where you were standing?

A. I moved from in front of the jail.

Q. How far was it from the jail door?

A. I guess that street is about 30 feet, as near as I could think. I will say about 40 feet from the jail door to the court-house fence, as near as I can get at it.

Q. What lights, if any, are in that neighborhood around there? Tell us the location.

A. Well, the electric lights at the jail there are made by their own dynamo at the jail, and they don't shine as bright as the lights that the city furnishes.

Q. Where are those jail lights?

A. Fastened on each corner of the jail building.

Q. Each corner?

A. Yes, sir.

223 Q. Do you know the difference between an arc and an incandescent light?

A. Yes.

Q. Which are they; do you know?

A. No, sir. Excuse me.

Q. Do you know whether they are arc or incandescent lights?

A. No, sir; I don't know anything about electric lights. When I see them I know when one shines brighter than another.

Q. Are they the same kind of lights as the ordinary street lights?

A. Yes, sir. They don't shine as bright.

Q. About how much, in the same proportion?

A. I don't know, sir, anything about the electricity.

Q. How many of them would it take to make the same light as a street light; that is my question?

A. I won't say, because I am not onto that.

Q. You cannot say?

A. No, sir; I won't say, because I ain't onto it.

Q. What people were around there? How many people were around there during that time?

A. Well, there was a pretty good crowd around there. Of course I didn't count them, but there was a pretty good crowd.

Q. Where was this crowd?

A. There was a good many over in front of the court-house
224 gate, as the crowd was not as thick there, I don't guess, as it was at the jail door.

Q Do you mean there was part of the crowd at the jail door?

A. Yes, sir.

Q. And a part of the crowd across the street where you were?

A. Yes, sir.

Q. Which was the bigger crowd?

A. Well, the bystanders looked to me to be the biggest.

Q. What do you mean by bystanders?

A. That is, men standing there that didn't seem to have no part in nothing—just looking on, like I was.

Q. Where were they standing?

A. Over in front of the court-house gate, opposite the jail.

Q. How many of them did there seem to me?

A. Oh, I don't know, sir. I have no idea.

Q. Were any of those men armed at all?

A. No, sir; I never seen an armed man.

Q. What were the men who were in the court-house yard doing?

A. They were standing there in the yard, is all I seen.

Q. Were they taking part in the mob, or were they bystanders?

A. They were just standing there. They just seemed to be standing still, doing nothing.

225 Q. Were they armed?

A. No, sir; I never seen an armed man. I never seen a gun.

Q. Did you see any deputy sheriffs there that night?

A. I seen Mr. Galloway; was the onliest man that I seen.

Q. Mr. Matt Galloway?

A. Yes, sir.

Q. Where does Mr. Matt Galloway live?

A. East Chattanooga.

Q. How far from you?

A. I guess it is about a mile, as near as I can get at it. I live on the last street, and he lives at Boyd, somewheres up there.

Q. How long have you known him?

A. I have knowed Mr. Galloway—I had no personal acquaintance with him, only I have seen him going and coming on the cars, as I did myself, in general—something over three years, I guess.

Q. Does he ride into town on the same car, or a different car from the one you come in on?

A. He don't have no certain car?

Q. I mean the same line?

A. Yes, sir.

Q. It is the same line?

A Yes, sir; just one line.

Q. You have seen him off and on that way for three or four years, as I understand you?

226 A. Yes, sir.

Q. Do you know him by sight?

A. Yes, sir.

Q. What sized man is he?

A. He is a very square-shouldered man.

Q. About how much would he weigh?

A. I guess about 180 or 185; from there to 190.

Q. When did you first see Mr. Galloway that night?

A. I guess I had been there perhaps a half hour, maybe, or not so long, when I seen him come from 7th street, coming walking pretty fast. He walked up to the crowd, and then I backed off. I never seen no more of him.

Q. Where did he go?

A. I don't know. I wouldn't swear he went in the jail, or where he went.

Q. Did you see where he went?

A. No, sir; I did not.

Q. Where was he when you saw him?

A. I was over on the court-house side.

Q. How far were you from him?

A. I was across the street.

Q. How did you see him? Was it indistinctly, or was it plainly; or how?

A. He was by his self when I seen him, clear, coming through the crowd.

Q. You do not know where he went?

A. No, sir; I do not.

227 Q. Did he summon any posse there, or call on people to help release the prisoner, or anything of that sort?

A. 'Deed I couldn't swear to any posse. I didn't see it.

Q. Did you see anything of that sort, or anybody trying to raise a posse to release the prisoner?

A. No, sir.

Q. Did the sheriff come out at any time and call for a posse?

A. I never seen the sheriff at all.

Q. Did he come to a window of the jail and call for a posse?

A. I didn't hear it.

Q. Did any officer of the law or anybody attempt to do anything to release the prisoner?

A. I won't say that, because Mr. Galloway was the onliest officer I seen or knowed, and if there was anybody hollered or called for help, I didn't see them.

Q. And he did not do anything, you say?

A. No, sir.

Q. To release the prisoner?

A. No, sir.

Q. How long after Galloway got there was it before the crowd left?

A. Perhaps it might have been about three-quarters of an hour.
Q. Did you see the crowd go out?
A. Yes, sir.
Q. Where had you been in the meantime?
228 A. I just kept backing out of sight, as much as I could.
Q. Did they bring him out of the jail?
A. Yes, sir.
Q. Where did they take him?
A. They come on up Walnut, towards the bridge.
Q. You followed as far as 4th street, I understood you to say, and then stopped?
A. Yes, sir; 4th street.
Q. Did the crowd of men that were outside of the jail stay there, or did they follow after the men who had Johnson?
A. They followed along with the men that had Johnson.
Q. Right close up, or some distance behind?
A. Some distance back.
Q. Did the men who brought Johnson out have any arms that you saw?
A. No, sir; I never seen no arms.

Cross-examination by Mr. PRITCHARD:

Q. What sort of a looking thing is a posse? Did you ever see one?
A. Me?
Q. Yes.
A. I suppose he means a crowd of men or officers.
Q. A crowd of officers?
A. That is what I suppose he meant.
229 Q. Did you see any crowd of officers there?
A. I didn't see anyone but Mr. Galloway that I could identify.
Q. At what stage of the proceedings was it you saw Mr. Galloway?
A. When I seen him he was coming up 7th street; coming right on up towards the jail.
Q. What was the mob doing then?
A. The crowd was standing there outside—just standing.
Q. Just standing there?
A. Yes, sir.
Q. Had they got the prisoner out?
A. No, sir.
Q. What time was that?
A. It was after nine o'clock, I guess.
Q. And they had not got him out?
A. No, sir.
Q. You had then been there three-quarters of an hour?
A. I guess I had.
Q. When you saw Galloway?
A. Yes, sir.
Q. Where was Mr. Galloway?

A. Coming from 7th street to the jail.
Q. What was he doing?
A. Nothing. He was coming right on. He walked up on the crowd.
Q. Did he walk up or run up?
230 A. He was walking pretty fast.
Q. What time was it you got there, did you say?
A. About nine, I guess.
Q. You had then been there three-quarters of an hour?
A. Yes, sir.
Q. So that was three-quarters past nine, you estimate it, when you saw Mr. Galloway?
A. Yes, sir.
Q. The mob was standing there, did you say?
A. Yes, sir.
Q. Not doing anything?
A. No, sir.
Q. They had not commenced battering the door down?
A. These men outside?
Q. You called those bystanders awhile ago?
A. Yes, sir.
Q. I have asked you what the mob was doing, two or three times. What was the mob doing, as you distinguish it?
A. They was on the inside, you know—the mob.
Q. What were they doing? Were they hammering or not?
A. Yes, sir; they was hammering; what I heard.
Q. Then they were doing something when you first saw Mr. Galloway?
A. Yes, sir.
Q. How long after you first saw Mr. Galloway was it before they first brought the prisoner out?
231 A. I guess it must have been something after ten o'clock.
Q. I asked you how long after you saw Mr. Galloway was it that they brought the prisoner out?
A. Well, sir, I don't have no idea. I had no watch.
Q. Give us an estimate of the time.
A. I guess it might have been about half an hour.
Q. A half hour?
A. I suppose so.
Q. Then according to your best judgment they got the prisoner out about a quarter past ten?
A. That is the way I put it up.
Q. You followed them on to 4th street?
A. Yes, sir.
Q. How long did it take you to get to 4th street?
A. It was a very short time.
Q. Did the mob pause or stop?
A. No, sir; they went right along.
Q. They did not stop at all?

A. No, sir.
Q. Did they stop at 4th street?
A. No, sir.
Q. Did they stop at 2nd street?
A. I don't know, sir. I didn't go there.
Q. But they did not stop at 4th street?
A. No, sir; from the jail to 4th they was going.
Q. They did not stop at 4th?
A. No, sir.
232 Q. They went right on?
A. Yes, sir.
Q. 4th street is at the foot of the hill that begins at 6th street, and you left them at the foot of that hill going toward the river, and at the intersection of 4th and Walnut street?
A. That is right.
Q. And they did not stop there?
A. No, sir.
Q. They did not stop on the hill?
A. No, sir.
Q. Not at all? There was no pause made?
A. No, sir.
Q. Did you see how many people were in the jail?
A. No, sir; I did not.
Q. Could you tell how many were in the jail?
A. No, sir.
Q. Have you any idea?
A. No, sir; I have no idea.
Q. How many would you estimate were in the yard?
A. I wouldn't estimate it, because I might make a mistake.
Q. You are afraid you will make a mistake?
A. I don't know that I would.
Q. Where were you standing?
A. Across the street, in front of the court-house.
Q. Inside of the court-house yard?
A. No, sir; on the sidewalk.
Q. Were you leaning against the wall?
233 A. Sometimes I was and sometimes I was not.
Q. You were standing on the sidewalk?
A. Yes, sir.
Q. How near the entrance to the steps that go up from the west side of the court-house were you standing?
A. Well, I was perhaps about ten or fifteen feet from the steps, the entrance that goes up in the yard.
Q. In which direction, north or south of the steps?
A. South.
Q. Do you mean this way from the steps?
A. Yes, sir; this way, towards 6th street, towards the 6th street entrance.
Q. 6th street is the other way, is it not?

A. No, sir.
Q. From here?
A. Yes; from here it is.
Q. On which side of those steps were you, on the side towards 6th street, or towards 7th street?
A. On the side towards 6th street.
Q. You were north of the steps?
A. Yes, sir.
Q. And not south?
A. That is right.
Q. And about 15 feet north?
A. Yes, sir.
Q. How long did you stand there at the same place?
A. I didn't stand there no time, because as the crowd would grow large, I drawed back.
234 Q. Where did you go?
A. I kept falling back to 6th street.
Q. You located yourself, when you first got there, about 15 feet north of the steps?
A. Yes, sir.
Q. And you kept beating back towards 6th street?
A. That is right.
Q. Or in a northerly direction?
A. Yes, sir.
Q. How far back did you get?
A. I got, I guess, about half way between the steps to 6th.
Q. Then did you come back at any time towards the steps?
A. No, sir; I did not.
Q. You kept going that way?
A. That way, all the time.
Q. You went something like a fourth of a block, then, in that direction?
A. Yes, sir.
Q. Which way did you see Galloway coming from?
A. From 7th street.
Q. How far were you away from 7th street?
A. That is about middle way of the two blocks.
Q. The steps are exactly middle way, are they not?
A. Yes.
Q. And you had gone half the distance north from the steps, had you not?
A. Oh, no; I hadn't gone at all when he come up.
235 Q. Did you not say a while ago you had?
A. As the crowd grew larger, I said I did.
Q. You said Mr. Galloway came there three-quarters of an hour after you found yourself there?
A. Yes, sir.
Q. You say when you first got there you located yourself at the steps, and did not stay there any time?

A. Yes, sir.

Q. But immediately began to beat your way back in a northerly direction, and had beaten your way back one-half that distance?

A. Yes, sir.

Q. Then, when you were asked how you could see Galloway from that position, you say you had not done that. Is that the way you put it?

A. No, sir.

Q. You had not done that at all?

A. No, sir.

Q. Where were you when Mr. Galloway came there?

A. I was on this side of the steps.

Q. Did you not swear you never at any time got on the south side of the steps?

A. I ain't said I was over there yet.

Q. Did you not just now say that you were on this side of the steps—on the south side?

A. No, sir; the north side.

Q. You were on the north side all the time?

A. Yes, sir.

Q. And when Mr. Galloway came you were on the north side?

236 A. Yes, sir.

Q. You were never at any time on this side, the south side, of the steps?

A. No, sir; because I would have been closer to the crowd.

Q. When you say this direction, you mean the south side?

A. No, sir; the north. I am turned around, but it is the north side I stayed on all the time.

Q. You were on the north side?

A. Yes, sir.

Q. You never at any time got on the south side?

A. No, sir; I did not, because I would have got closer to the crowd if I had.

Q. At all times you were on the side of the steps toward the river?

A. Yes, sir; that is right.

Q. Or north?

A. Yes, sir.

Q. That is where you were when Mr. Galloway came from 7th street?

A. Yes, sir.

Q. On which side of the sidewalk on 7th street did Mr. Galloway come?

A. On the side next to the jail.

Q. On the side next to the jail?

A. Yes, sir.

Q. That is where you were then?

A. No, sir.

237 Q. And that is where you saw him from the position you were in?

A. Yes, sir.
Q. Where did you first see him? Where was he?
A. Coming up the sidewalk.
Q. At what place was he? What point on 7th street?
A. He come up 7th, from the way I could see him.
Q. How far down 7th street was he when you saw him?
A. He was coming from 7th. No, sir; I didn't see him down there.
Q. You did not see him down 7th street?
A. No, sir.
Q. Where was he when you saw him?
A. He was coming right on towards the jail.
Q. What street was he on?
A. On Walnut.
Q. Which side of Walnut?
A. Over on the side next to the jail.
Q. Do you know whether he came out of 7th street, or whether he came out of Georgia avenue?
A. No, sir; because he was coming from towards 7th. I don't know.
Q. He was coming from Georgia avenue also, was he not?
A. No, sir; he couldn't have done it, because Georgia avenue is on the opposite side of the court-house.
Q. Does not Walnut street cross 7th and does it not intersect, at a point immediately south of there, with Georgia avenue?
238 A. Yes, sir.
Q. How could he be coming, then, from the direction of 7th street without also coming from the direction of Georgia avenue?
A. He could have done that.
Q. Then how do you know he was not coming from Georgia avenue?
A. He may have done it. I told you when I first seen him.
Q. You are guessing at that?
A. No, sir; not guessing.
Q. You saw him, but you do not know where he was coming from?
A. He was coming from that direction, from 7th street; yes, sir.
Q. When he came up, where did he go?
A. He went in the crowd of the people at the jail.
Q. Inside or outside?
A. Outside was where I last seen him.
Q. How long after he got there was it before the prisoner was gotten out?
A. I guess it was something after ten o'clock when they got him out.
Q. How long was that?
A. I don't know, sir.
Q. Has anybody told you anything about the hour, that you are so cautious about saying anything about the difference in time?
A. No, sir.

239 Q. How long was it?

A. It might have been three-quarters of an hour, as near as I can get at it.

Q. How long had you been there before Galloway came?

A. I had been there some time.

Q. Well, how long?

A. I guess I might have been there three-quarters of an hour.

Q. How long had you been in town that night?

A. I hadn't been out of town. I worked in town. I hadn't been home that night.

Q. Where did you work?

A. W. B. Hughes, out on Boyds.

Q. What does W. B. Hughes do?

A. He runs a planing mill.

Q. You did not work at Dave Hughes'?

A. When I went there they transferred me to the other. I worked for both firms. I worked for W. B. Hughes at that time.

Q. How long had you been at W. B. Hughes'?

A. I had been out I guess about three months, because when they burned out they transferred me to the planing mill.

Q. To Mr. Dave Hughes' planing mill, did they?

A. Yes, sir; because they burned out.

Q. What time did they burn out?

A. Last year some time.

Q. What time last year?

A. I don't know, sir. Some time after Christmas.

240 Q. Was it before or after this Johnson lynching?

A. It was before the Johnson lynching.

Q. And you had been transferred over there?

A. Yes, sir.

Q. From the time of the fire?

A. Yes, sir.

Q. And you were still there at the time of the Johnson lynching?

A. Yes, sir.

Q. Where did you live?

A. Sherman Heights.

Q. You did not live in Chattanooga, then, as you stated a while ago?

A. No, sir.

Q. How far do you live from Chattanooga?

A. I guess Sherman Heights is about five miles from town. I guess that is about the distance.

Q. At what point in Sherman Heights do you live?

A. I live on Glass street.

Q. Whom do you rent from?

A. I don't rent from anybody. I own my property.

Q. What number is it, then?

A. 503 Glass street.

Q. How long have you been living there?

A. I have been living in Sherman Heights close up to 14 years.
Q. You say you know Mr. Galloway?
A. Yes, sir.
Q. Have you a personal acquaintance with him?
241 A. No, sir; I just know him when I see him.
Q. Have you been knowing him long?
A. I guess between three and four years.
Q. You say you have known him 23 or 4 years?
A. No, sir; between three and four years.
Q. Were there many people in the street?
A. Yes, sir; a good many.
Q. A large number of people?
A. Yes, sir.
Q. What sort of a fence has the jail around it?
A. A stone fence.
Q. The jail?
A. Oh!
Q. What sort of a fence has the jail around it?
A. It had got an iron fence in front, if I ain't mistaken.
Q. How far is it from the fence to the jail?
A. I don't know, sir. I never paid any close attention.
Q. About how far?
A. I guess about 20 feet, perhaps.
A. As near as I can guess it.
Q. About twenty feet?
A. As near as I can guess it.
Q. Was the jail yard, from the jail to the fence, filled up with people.
A. Pretty full.
Q. And from the jail fence in the street, was that filled up with people?
A. No, sir; the street hadn't got full.
242 Q. Did it get full?
A. Yes, sir; it got full when the prisoner come out.
Q. How long did it take for the street to get full?
A. I guess about half an hour.
Q. And it took over three-quarters of an hour to get the prisoner out?
A. Yes, sir.
Q. So that at the time they got the prisoner out, the jail yard and the street in front of the jail were filled with people?
A. Yes, sir.
Q. And the court-house yard?
A. No, sir; I didn't say that.
Q. What about the court-house yard?
A. There was a few people up in the court-house yard.
Q. What do you mean by a few?
A. There may have been 15 or 20 up in the yard.

Q. That is about all there were up in the yard?
A. That is all I suppose there was.
Q. How many people were there altogether?
A. I don't know, sir. I didn't count them.
Q. I did not ask you whether you counted them. About how many people were there there?
A. There was a pretty good crowd.
Q. Ten people in all?
A. Oh, more than that.
Q. Twenty?
A. Yes, sir; more than that.
243 Q. Five hundred?
A. No, sir; I wouldn't say that.
Q. How many? Give us an estimate if you can.
A. About two or three hundred, in all.
Q. They filled up the court-house yard?
A. No, sir.
Q. The jail yard and the street in front of the jail, and they had got there in that position within about half an hour?
A. Yes, sir.
Q. Which street did you come up when you went to the gate?
A. Which street did I come up?
Q. Yes.
A. Up 6th street.
Q. Where did you come from?
A. I come from Market.
Q. Where on Market?
A. I come from my work out here, and went down Market.
Q. Where had you been on Market?
A. I had just been up and down Market street.
Q. Just walking up and down the street?
A. Yes, sir.
Q. Did you have any business?
A. Yes, sir; I had business at a barber shop, one place.
Q. But you had been walking up and down the street?
A. Yes, sir.
244 Q. Then you walked up 6th street?
A. Yes, sir. The reason I done it I was very cold and I aimed to catch my car at 6th and Vine to go out.
Q. To catch your car at 6th and Vine?
A. Yes, sir.

Redirect examination by Mr. SANFORD:

Q. Leaving out the word "posse," did you hear the sheriff or any deputy sheriff call on the people or the citizens to come and help release that prisoner?
A. No, sir.
245 Q. Did you hear anything of that sort?
A. No, sir.

Q. How far was the police station from where you were standing? How far was it from that place where you saw Mr. Galloway to the police station?

A. I guess the police station is about three blocks from the jail.

Q. About three blocks?

A. Yes, sir.

Q. Did you see Mr. Galloway walk in the direction of the police station—leave and go towards the police station?

A. No, sir.

Q. Did he go that way?

A. No, sir; he come from the 7th street point.

Q. I say, did you see him then, when he found there was a mob, go towards the police station after policemen, or anything?

A. No, sir; I just seen him when he come up.

Q. You did not see him any further?

A. No, sir.

Q. How far away was the armory, do you know, where the cavalry drill?

A. Down on the corner of 4th and Market.

Q. How far away was that?

A. I guess that is close to about four blocks.

Q. About four blocks?

A. That is about the way I put it up.

246-259 Q. Did you see Mr. Galloway come there at any time with policemen with him?

A. No, sir; I just seen Mr. Galloway once.

* * * * * * *

260 *Afternoon session of Thursday, February 14th.*

AFTER RECESS.

The hearing was resumed at two o'clock p. m.

J. N. STONECIPHER, a witness produced on behalf of the United States, and after being duly sworn according to law by the commissioner, testified as follows:

By Mr. SANFORD:

Q. Is your name John N. Stonecipher?

A. Yes, sir; John N.

Q. What is your business?

A. I am a builder and contractor.

Q. Where do you live, Mr. Stonecipher?

A. Cohutta, Georgia.

Q. In Chattanooga?

A. No, sir; I live at Cohutta, Georgia.

Q. What is that?

A. A little town about thirty miles out east of here.

Q. You live in the town of Georgia, you say, about thirty miles from Chattanooga?
A. Yes, sir.
Q. In Cohutta County?
A. No, sir; in Whitfield County.
Q. Where are you in business?
A. In Chattanooga.
Q. How often are you in Chattanooga?
A. I am here all the time except Sunday.
Q. Where do you stay during the week? Do you go back to your home during the week or do you stay here?
A. No, sir; I stay here.
Q. Where do you stay?
261 A. At 816½ Georgia avenue.
Q. Is that in the city of Chattanooga?
A. Yes, sir.
Q. You go back home Sundays?
A. Yes, sir.
Q. What was your habit as to staying here during March of last year and during last year, the same way?
A. I lived here at that time.
Q. You lived here?
A. Yes, sir.
Q. Did you live here at the beginning of 1906?
A. Yes, sir.
Q. How long did you continue to live here?
A. I moved away from here the first of December last.
Q. Just about two months ago?
A. Yes, sir.
Q. And up to that time, during the year 1906, you lived in Chattanooga?
A. Yes, sir.
Q. On Georgia avenue?
A. No, sir; at Ridgedale.
Q. Were you in business as a contractor?
A. Yes, sir.
Q. Mr. Stonecipher, do you know the defendant, William Mayes?
A. Yes, sir.
Mr. SANFORD. Gentlemen, what is the full name under the answer? Is it George William Mayes?
Mr. PRITCHARD. William Mayes is the man.
Q. (By Mr. SANFORD.) Do you know him?
262 A. Yes, sir; I know William Mayes.
Q. Do you know the defendant Henry Padgett?
A. Yes, sir.
Q. Do you know the defendant Frank Ward?
A. Yes, sir.
Q. Did you meet any of these defendants shortly before the lynching of Ed. Johnson?

A. Yes, sir; I met Mayes and Padgett and Ward on the evening before.

Q. Mayes and Padgett and who?

A. Ward.

Q. You met all three of them?

A. Yes, sir.

Q. Did you meet them all together or separately?

A. No, sir; I didn't meet them together.

Q. Which one or more did you meet first?

A. I met Padgett and Mayes first.

Q. Where did you meet them, and at what time?

A. I met them at the corner of Oak and Lindsey streets about half-past four in the evening.

Q. What was that; the afternoon before the lynching?

A. Yes, sir; before the lynching.

Q. That is, it was on the same day the lynching occurred, but in the afternoon?

A. Yes, sir.

Q. And before the lynching had occurred?

A. Yes, sir.

Q. Did you talk with them at that corner, or go somewhere else and talk with them?

A. I talked there a few minutes, and walked to the court-house with them.

Q. Did you have any conversation with them that related
263 to a lynching in any manner? If so, state what it was.

Mr. CLIFT. We object to the question.

The COMMISSIONER. Note the objection.

Mr. PRITCHARD. He is asking him in reference to defendants whom we do not represent.

Mr. CLIFT. I withdraw it.

Q. Did you have any conversation with them in reference to a lynching?

A. Yes, sir.

Q. Or they with you?

A. Yes, sir.

Q. Just state what occurred in regard to it.

A. Mr. Padgett asked me if I had heard what the Supreme Court had done in the Johnson case. I told him I had understood that they had stayed the execution. He said yes, that is what he had understood, and it was a damned outrage.

Q. Please talk louder, Mr. Stonecipher. The gentlemen over there want to hear. You must talk as loud as you can.

A. I am talking as loud as I can.

Q. Go ahead. What occurred?

A. Then they said they had no business interfering with our business at all.

Q. Go ahead. Keep right on. Just tell the conversation.

A. That is about all that Padgett said. Then Mayes said: "We will see to that ourselves."

Q. Go ahead. Was that in Padgett's presence?

A. Yes, sir; they were both together.

Q. Then what occurred?

A. That was about all that was said that evening.

264 Q. That evening?

A. Yes, sir.

Q. Did you see Ward that evening?

A. Yes, sir; I saw Ward.

Q. Or next day?

A. That evening, the same evening.

Q. How much longer was that—in the first place, when that remark was made about "We will see to that ourselves," was the man who made it separated from the other man, or was he close up?

A. No, sir; they were both up close together.

Q. Was it so it could be heard? Were all three of you together?

A. Yes, sir.

Q. When did you see Ward?

A. I saw him about five o'clock or a little after.

Q. Where did you see Ward?

A. I saw him in front of Mullery's saloon, on Market street.

Q. Mullery's saloon?

A. Yes, sir.

Q. On what street is that?

A. Market street.

Q. At about five o'clock?

A. At about five o'clock.

Q. What was said? Did you have any conversation with him?

A. I stopped on the curb, waiting for a car to go home, and Ward called to me. He says "Ain't you from Georgia?" I says "I used to live there."

Q. What is that?

265 A. I stopped on the curb, and Ward came out of the saloon. He hollered at me and called me by name. He said "Ain't you from Georgia?" I says "Yes, I used to live in Georgia—mighty near raised there." He says "We want you to help us lynch that damn nigger to-night."

Q. What was that?

A. He says "We want you help us to lynch that damn nigger to-night."

Q. What did you say?

A. I says "I don't believe it would pay. I believe Sheriff Shipp would shoot the red hot stuff out of you."

Q. What did he say?

A. He says "No, it is all agreed. There won't be a sheriff nor a deputy there." I said "Ward, I believe you are lying." That is just what I told him.

Q. Did you have any further conversation with him that night?
A. No, sir. Then I just got on the car and went home. The car come along.
Q. You went on home?
A. Yes, sir.
Q. How long had you known these men?
A. I have known Padgett and Mayes, I guess, fifteen years.
Q. How had you known them; in what way? What was there business?
A. I have worked with them on several jobs, on carpenter work.
Q. Were they both carpenters?
A. Both carpenters; yes, sir.
Q. You had worked with them on carpenter jobs?
266 A. Yes, sir.
Q. How long had you known Ward?
A. About two years.
Q. What is Ward's business?
A. Bricklayer.
Q. How often had you seen him?
A. Well, the winter before that I boarded at the same place he did about six months.
Q. You boarded at the same place?
A. Yes, sir.
Q. Did you see either of them any more that evening?
A. No, sir; not that evening.
Q. Did you go home, or where did you go?
A. I went home.
Q. Were you out that night at all?
A. No, sir.
Q. Do you know anything of your own personal knowledge about that mob that night?
A. No, sir; not a thing in the world.
Q. Did you see anybody out that night in the mob?
A. No, sir; I didn't see anybody.
Q. Did you see any of these gentlemen later, after the night of the lynching?
A. Yes, sir.
Q. Which one did you see first?
A. I saw Mr. Padgett first.
Q. Before coming to that, was there anything special in the condition of the street between the jail and the bridge, that you know of?
A. Yes, sir; I got to a job that I was doing up there by the
267 court-house and I heard that the nigger was lynched. I started to go to the bridge, and as I went—I believe between Third and Fourth streets, the street is paved with white clay.
Q. White clay?
A. White-looking dirt.
Q. You say you saw Padgett the next morning?

A. Yes, sir.
Q. Was it Padgett?
A. Yes, sir; I saw Padgett the next morning.
Q. If I make a mistake, just correct him. Where did you see him?
A. I saw him at Ransom's saloon.
Q. Inside or outside?
A. Inside.
Q. What time of day was it?
A. It was about half past seven.
Q. What conversation occurred between you at that time?
A. I went in and Padgett had the Morning Times, and the first word he said, he said: "This damn paper has printed a lie about this lynching." I said: "How do you know it is a lie, Henry?"
Q. What did he answer?
A. Well, he told me he was there.
Q. Did anything further occur in that conversation? What was the condition of his shoes, if you noticed?
A. And just as he said that Alf Handman come in.
Q. Is he one of the defendants in this case?
A. Yes, sir; I suppose so.
Q. He came in?
A. Yes, sir; and Henry just turned up his shoe this way.
268 He says: "Why, I haven't got the mud off my shoes yet." Alf. says: "I cleaned mine before I come."
Q. Was anything further said between you at that time?
A. And Henry says, "We did the nigger up all right, didn't we?" Alf. says, "You bet we did." That was all that was said.
Q. Did you see either of those gentlemen again and have any further conversation with them about this matter—any of those parties, either Padgett or Handman? Did you have any further conversation with them about that lynching?
A. No, sir; I don't remember seeing Mr. Handman since.
Q. Have you ever seen Mr. Mayes since and had any conversation with him on the subject, or Mr. Ward?
A. I saw Mr. Mayes about eight o'clock the next morning, I reckon.
Q. You mean the same morning you saw Padgett?
A. Yes, sir.
Q. Where did you see Mayes?
A. I met him right in front of the Stag Hotel.
Q. Did you have a conversation with him?
A. Yes, sir; he had the left side of his nose skinned up pretty bad, and I says, "Hello, Bill, what is the matter with your nose?" He says, "I skinned it last night breaking that damned jail door down in getting the nigger out."
Q. Did you see Mr. Ward?
A. I saw Mr. Ward that evening.
Q. What conversation did you have with Mr. Ward?
A. He come out of Jack Price's saloon and was standing in the vestibule, and he says, "You are the first damned man from Georgia

ever I saw that didn't have nerve enough to kill a nigger." I told him I didn't have much nerve when I had to buck up against the Government.

269 Q. Were these the same men that had talked to you before?

A. The same men.

Q. That is the Ward and the Padgett and the Mayes, the same men that had spoken to you about it the night before?

A. The same men.

Q. And Mayes and Padgett were the men you had known how many years before, did you say?

A. About fifteen, I suppose.

Q. And worked with them on carpenter jobs?

A. Yes, sir.

Q. And Padgett you have known, as you have stated, some years?

A. Yes, sir.

Q. Did any of those men ever tell you the names of any of the persons who were in that mob?

A. Yes, sir; Ward told me several names in the mob.

Q. When did he tell you that?

A. It was along about the 10th of June.

Q. Of what year?

A. Last year.

Q. I do not ask you to give the names of anybody who is not a defendant in this case. Do you know the names of all the defendants in this case? I do not suppose you do.

A. I do not know whether I do or not.

Mr. PRITCHARD. I really do not know what the witness will say in answer to any question, but I submit the statement by any of the defendants on June 10th as to who else was in the mob would not be admissible as against any other defendants, either those I represent or anybody else.

There is one matter I did not want to interrupt you about,

270 Mr. Attorney-General, at the time it occurred. Awhile ago the witness stated some alleged conversation with a man by the name of Ward, to the effect that there would not be any deputies or sheriff at the jail that night. Of course, I want to interpose an objection to that testimony so far as the sheriff and his deputies are concerned.

The COMMISSIONER. Note the objection.

Mr. SANFORD. I doubt if that would be competent, and I will not ask for those names at this time. I reserve the right to call him again. I do not want to have those names put in the record if it is not competent. I will consider that a little further, and reserve the right to recall him.

Q. (By Mr. SANFORD.) But he did give you a list of names?

A. Yes, sir.

Q. That fact I want to ask for now, if it is a fact. He told you, you say?

A. Yes, sir; he told me.

Cross-examination by Mr. SHEPHERD:

Q. Mr. Stonecipher, you are the same man who had a litigation before Judge Hope in this town, in which a man by the name of Mr. Sapp sued you for a bill which he claimed you owed him, are you not?

A. Yes, sir.

Q. You formerly came from Whitfield County, Georgia?

A. Yes, sir.

Q. And Dalton is the capital of Whitfield County, is it?

A. Yes, sir.

Q. How many years is it since you left Whitfield County?

271 A. I lived out there a while in 1903.

Q. That was your home before you came to Chattanooga to live, was it not?

A. Well, no; I couldn't say it was. I wasn't there much. I was in Texas. My family was there, but I was in Texas.

Q. You were a sort of migratory or ambulatory character, were you not?

A. I don't what kind of character you call that.

Q. Moving about from post to pillar.

A. I go where I can make the best living.

Q. You and Henry Padgett had worked together as carpenters on a number of jobs, you say?

A. Yes, sir.

Q. And you and Mr. Mayes had also worked as carpenters on jobs together?

A. Yes, sir.

Q. And therefore you knew those gentlemen well, did you?

A. Yes, sir; very well.

Q. How much have you ever known of the man you mentioned as Mr. Alf. Handman?

A. I never saw the man but two or three times in my life.

Q. That was his name, was it—Alf Handman?

A. I asked Henry Padgett who the man was, and he told me it was Alf. Hammond.

Q. How did he spell it?

A. Hammond, I suppose.

Q. You did not know him well enough to say who the man was, and you had to ask Henry Padgett?

272 A. Yes, sir; I had to ask Henry Padgett.

Q. Did you know what that man Handman did for a living?

A. I had saw the man in the fire department once, and I asked Henry, and Henry said he was a fireman.

Q. Henry Padgett told you he was a fireman?

A. Yes, sir.

Q. You know Mr. Britton, the deputy sheriff of Dalton, Georgia, do you not?

A. I know him when I see him.

Q. And you know Mr. Sapp, the clerk of the court at Dalton?

A. Yes, sir; I know Mr. Sapp.

Q. And Mr. Bill Mann, W. E. Mann, of Ringgold, Georgia—you know him?

A. Yes, sir.

Q. He is a lawyer there. I will ask you to state if you gave any information to the government secret service men of what you would testify to in this case?

A. What I would testify?

Q. Yes, sir.

A. Yes, sir; I have done that.

Q. When did you do that?

A. It was in April, I reckon—April or May, I forget which.

Q. How did they know what you would testify to, Mr. Stonecipher?

A. Well, they come to me and asked me.

Q. Had you not told anybody before what you knew?

A. No, sir; I don't remember that I had.

273 Q. The first time that ever you told anybody was when these government special agents came?

A. Yes; I had told a man before that.

Q. Who was that?

A. Well, I don't know whether I will tell that or not.

Q. We insist on your telling.

A. I promised the man I would never give his name.

Q. We call on you now, in a court of justice, to give the name of the man you told it to.

(A pause.)

Mr. FLEMING. Don't look over there. Look this way.

A. I was trying to think of—when I promise a man, when I tell him anything I won't give his name away——

Mr. SHEPHERD. We insist, Mr. Commissioner, that the witness should be compelled to answer the question.

The COMMISSIONER. He must answer it.

A. Well, I told Mr. Early.

Q. (By Mr. SHEPHERD.) Is that the only man?

A. That is the only man except the secret service men.

Q. How long was it after you told Mr. Early until the secret service men came to you?

A. I forget whether it was—it wasn't very long.

Q. The Mr. John H. Early you speak of is a lawyer here at this bar, is he?

A. Yes, sir.

Q. And he is sitting there at the end of the table just in front of you now?

A. Yes, sir.

Q. That is the same man you told it to?

A. The same man; yes, sir.

Q. When was it you told him that?

A. I can't remember the date now.

274 Q. Was Mr. Early your attorney in any matters at that time?

A. No, sir.

Q. How much acquaintance had you with Mr. Early?

A. I have known Mr. Early for fifteen years.

Q. Did he ever represent you in any lawsuits?

A. No, sir.

Q. You are sure you told that to Mr. Early, are you not?

A. Oh, yes, sir; I am sure of that.

Q. You are just as sure that you told Mr. Early as you are of these other things you testified about?

A. I am sure of all of them.

Q. You are sure of all of them?

A. Yes, sir.

Mr. LYNCH. Mr. Sanford, we understood you to concede that his deposition in reference to Captain Shipp and his deputies is not competent against them.

Mr. SANFORD. Not that preliminary declaration. I will not concede that at all. I did not ask him for the names that Frank Ward gave him afterwards. I reserved the right to recall him.

Mr. LYNCH. I mean it is not competent as against these people.

Mr. SANFORD. I do not concede that at all. You noted your exception, as I understood.

Mr. LYNCH. Perhaps I misunderstood what you said following that.

Mr. SANFORD. I did not mean to refer to that.

Mr. CLIFT. We understood you to say you thought that was
275 incompetent and that you withdrew it for the time being.

Mr. SANFORD. Then I did not make myself plain, Colonel. What I meant to say was that I had doubts as to the competency of the testimony as to names given him by Frank Ward afterwards, and I did not ask him for them. No; I do not withdraw that question. I do not think the record will show that I said anything about it.

By Mr. LYNCH:

Q. At the time of that conversation you say occurred between you and these various people, were Captain Shipp or any of his deputies present?

A. No, sir.

Q. None of them?

A. No, sir.

Mr. LYNCH. That is all. We do not excuse him, but we may want him again.

By Mr. HOOD:

Q. In this conversation you say you had with Ward and Padgett—and what was the other man's name?

A. Mayes.

Q. On the corner of Oak and Lindsey street—when was that, did you say?

A. It was on the evening before the lynching.

Q. The evening before?

A. Yes, sir.

Q. About what time?

A. About half past four with Padgett and about five with Ward.

Q. According to your testimony in chief nothing was said
276 by Ward in that conversation about the lynching but what was said was said by Padgett and by Mayes. Is that correct?

A. No; Ward just asked me if I wasn't from Georgia.

Q. No; not at that conversation. You did not state anything about Ward having said anything in that conversation, did you?

A. Which?

Q. At the corner of Oak and Lindsey streets.

A. No, sir; Ward wasn't there.

Q. He never said anything about the lynching at all? What was said was said by Mr. Padgett and Mr. Mayes. Is that correct?

A. No, sir; I saw Ward on Market street, and Padgett——

Q. He never said anything about the lynching there according to your statement awhile ago. Ward never said anything about the lynching?

A. Oh, yes.

Q. When was this conversation at Jack Price's saloon?

A. It was about five o'clock in the evening.

Q. The same evening?

A. The same evening.

Q. That was about half-past four, up there?

A. Yes, sir.

Q. That you declined to have anything to do with the lynching?

A. Yes, sir.

Q. Who was present at Jack Price's saloon at the time you say you had that conversation with him there?

A. There was two or three present.

Q. Who were they?

A. My brother was one of them.

277 Q. What is his name?

A. H. M. Stonecipher.

Q. Where does he live?

A. He lives at Ridgedale.

Q. Who else was there?

A. I think Dave Bowles was there.

Q. Who is he?

A. He is a carpenter here in Chattanooga.

Q. How do you spell it?

A. B-o-l-e-s is the way I spell it.

Q. Who else was there?

A. That is all I remember of, and I am not sure of Bowles.

Q. You are not sure about Bowles being there?

A. No, sir.

Q. You say he was standing in front of Jack Price's saloon?

A. No, sir; I was standing on the curbing, and he come to the front.

Q. You were all four standing on the curbing in front of Jack Price's saloon about five o'clock?

A. About five o'clock.

Q. On the same day the lynching took place that night?

A. Yes, sir.

Q. Where do you reside now, Mr. Stonecipher?

A. 816½ Georgia avenue.

Q. How long did you say you had known Ward prior to that time?

A. About two years, I suppose.

Q. You know of another Frank Ward in Chattanooga?

A. No, sir; I do not.

278 Q. Do you know that there are two Frank Wards in Chattanooga?

A. No, sir; I don't know it.

Q. Did you know where Mr. Ward lived at that time?

A. He boarded down on Market street, just beyond the railroad crossing, I understood. He told me he did.

Mr. SANFORD. What did you say?

A. He told me he boarded on Market street, just beyond the railroad crossing.

Q. (By Mr. HOOD.) Where did you say your brother lives?

A. Ridgedale.

Q. That is the only conversation you had with Mr. Ward about it, was it?

A. No; I saw him the next evening then.

Q. Where was that?

A. Right in front of Price's saloon.

Q. Another conversation in front of Price's saloon?

A. Yes, sir.

Q. Who was present at that time?

A. Well, my brother was with me.

Q. H. M. Stonecipher?

A. Yes, sir.

Q. Who else was present?

A. I didn't notice any one much. There were several around there, but I didn't pay no attention to them.

Q. About what time was that?

A. About five o'clock.

Q. Five o'clock the evening before the lynching you had a conversation, and you had a conversation also about five o'clock on the evening after the lynching, did you?

A. Yes, sir.

279 Q. Your brother was present, and you cannot tell who else was present?

A. No; I didn't notice. There were several around there listening at the conversation, but I didn't notice who they were.

By Mr. EARLY:

Q. Mr. Stonecipher, when was young Stonecipher killed?
A. The 22d of September, I think it was.
Q. Of this last September?
A. Yes, sir.
Q. You know where my office is, do you not?
A. Yes, sir.
Q. On the 6th floor of Temple Court?
A. Yes, sir.
Q. You were never at my office at any other place except there on the 6th story, were you?
A. Oh, I have been to the office several times before that building was remodeled.
Q. When what?
A. Before the building was remodelled.
Q. Where was my office at any other time you were there?
A. I believe it was the second floor. I am not sure.
Q. You say you told me about the names of these people?
A. Yes, sir.
Q. What names?
A. I gave you a whole list of names.
Q. You gave me a whole list of names?
A. Yes, sir.
Q. When was that?
280 A. It was along in April or May, I forget which; I believe about the first of April.
Q. What was the occasion of your doing that?
A. I understood you were getting evidence, too, in the lynching. I don't just why.
Q. Is it not a matter of fact, Mr. Stonecipher, that you were never at my office except when you came there to consult me about the death of your nephew?
A. Oh, no; I have been to your office lots of times.
Q. You say you have known me how long?
A. Fifteen years, I guess.
Q. When you came to my office, you came to consult me about the death of the young man, did you not?
A. I was there one time on that occasion; yes, sir—twice, I think.
Q. And you said to me that you thought his death grew out of this matter, did you not?
A. Yes, sir; I did.
Q. And I told you that in my judgment it had nothing to do with it, did I not?
A. No, sir; you said in your judgment you believed that the Supreme Court had no jurisdiction. That is what you told me.
Q. How is that?

A. You said you didn't believe the Supreme Court had any jurisdiction in it. That is what you told me.

Q. I also said it had no connection with this thing, did I not?

A. Yes; I believe you did.

Q. What is that?

A. I think you did; yes, sir.

281 Q. Were you ever at my office at any other time than that?

A. Yes, sir; two or three times.

By Mr. SHEPHERD:

Q. One other question I want to ask. I understood you to answer Mr. Early awhile ago that the reason you spoke to him about it was that you understood he was getting up evidence, too, in this government case?

A. Yes, sir.

Q. Then you were engaged in getting up evidence in this case, were you? Well, don't laugh so much, but answer the question.

A. Yes, sir; I got up some evidence in the case.

Q. You were engaged to get up evidence in the case?

A. No, sir; I wasn't particularly engaged.

Q. But you were, in fact, getting up evidence in the case?

A. Yes, sir.

Q. At whose instance were you getting up evidence in the case?

A. Just on my own hook.

Q. Had anybody interested you to get evidence on the side of the Government in the matter of this lynching?

A. No, sir.

Q. Then what interest did you have in getting up evidence?

A. I just thought somebody ought to take some interest in it. If they had a law, it ought to be carried out.

Q. For the public good?

A. Yes, sir.

282 Q. The Government had not employed you for that purpose?

A. No, sir.

Q. And had not promised to give you anything for that service?

A. No, sir.

Q. Neither had any of the special agents of the Government, secret service men of the Government?

A. No, sir.

Q. You just took it into your head that you ought to get this thing up for the public good?

A. Yes, sir.

By Mr. EARLY:

Q. Were you at my office not long ago in reference to employing me to prosecute in this case, or was it your brother?

A. It wasn't me.

283 PRESTON W. WALKER (colored), a witness produced on behalf of the United States, being duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Where do you live, Pres.?

A. I live in the city here, in the Fourth Ward, Ross street, 22.

Q. How long have you been living in Chattanooga?

A. I come here in 1876, the 15th day of this month.

Q. Have you ever been an officer in this county in any way?

A. Yes, sir.

Q. What offices have you held?

A. Deputy sheriff.

Q. When?

A. I really don't remember the year, but it was under Sheriff Skellern's administration.

Q. How long were you a deputy sheriff?

A. About three years.

Q. Have you ever had anything since that time to do with the county jail?

A. Well, no, sir; nothing more than I was a cook up there.

Q. You were a cook at the county jail?

A. Yes, sir.

Q. When were you a cook at the county jail?

A. I started up there, I believe, in 1905.

Q. Under what sheriff?

A. J. F. Shipp.

284 Q. How long did you stay and cook there?

A. To the best of my knowledge, about eighteen months.

Q. Were you a cook there at the time of the Ed. Johnson lynching?

A. Yes, sir; I was there then.

Q. How long did you stay there after that?

A. I disremember exactly how long I was there; not very long, though.

Q. Do you remember the day of the Ed. Johnson lynching?

A. Yes, sir; I think so.

Q. I will ask you whether there was anybody around the jail that afternoon?

A. Yes, sir; there was a good many around there in the afternoon.

Q. Who did you notice at the jail that afternoon? Were any of the deputies there?

A. Well, most all of them was there.

Q. Tell us who you mean. Give us the names of the deputies who were around there.

A. At what time in the day do you mean?

Q. Take it along at two or three o'clock. Begin at two or three o'clock.

A. I think about all of them were there, in and out, off and on, until along about two o'clock.

Q. Do you know what Mr. Taylor's duties were? Was he the man who had charge of the electricity, or was he a regular deputy? What was he?

A. I couldn't say. He acted both.

Q. He acted both?

A. Yes, sir; as well as I could see.

285 Q. Did he have anything to do with prisoners?

A. Yes, sir; sometimes he would carry them backwards and forwards to court, and sometimes he was jailer. He would feed them now and then when the rest of them would be off. He would open up, and me and him would feed.

Q. He would help you feed sometimes?

A. Yes, sir.

Q. You know Mr. Clark?

A. Clark?

Q. Yes; Joseph Clark?

A. Joseph Clark?

Q. Joseph Clark. Was he not a deputy sheriff, or had he not been?

Mr. PRITCHARD. He was asked by you a while ago to name them, and he said pretty nearly all of them.

Mr. SANFORD. I see. Just name the deputies. I think that is a good suggestion.

Q. (By Mr. SANFORD.) Just name the deputies.

A. At that time in the day—at two o'clock?

Q. I just want you to name the regular deputies of the sheriff—who they were.

A. That was there about two o'clock, you mean?

Q. No; I mean just the regular deputies all the time. Do you remember who they were at that time?

A. You mean those that served all the time?

Q. Yes; give us all the names you can remember.

A. There was Mr. Richardson and Mr. Galloway.

Q. What was his first name?

A. Matt Galloway and Charles Baker.

286 Q. Was that Mr. C. A. Baker?

A. Yes, sir. I didn't know him by his initials; and Mr. Frawley.

Q. What were his initials?

A. Fred Frawley. F. A. Frawley, I believe, is the way he signs it. I believe I called Mr. Richardson. Mr. Taylor, he acted deputy, too; and a fellow by the name of Perkins. I don't know his name; and Mr. Yarnell, and Mr. Clift was some sort of a deputy.

Mr. PRITCHARD. What name did you say?

A. Mr. Clift. I don't know his other name. Will Clift, I believe his name was.

Q. (By Mr. SANFORD.) Do you remember any more?

A. Oh, I know them all, but I just naturally can't get the names to me right now.

Q. Who were the jailers?
A. The night jailer was Mr. Gibson, and the day jailer was Captain George Brown.
Q. What was Mr. Gibson's full name?
A. Jerry Gibson.
Q. Mr. Jerry Gibson?
A. Yes, sir.
Q. And the day jailer was Captain George Brown?
A. Yes, sir.
Q. Where did Captain George Brown and his family live?
A. They lived upstairs in the jail.
Q. What became of them, if you know? Were they there on the day of the lynching? Did they stay there?
287 A. They stayed there until about direct seven o'clock; they finally got on the car and they went to Hill City. Their really home or residence was in Hill City.
Q. How long had they been living there at the jail before that time, staying there nights?
A. Every night, you mean?
Q. Yes.
A. Really, I couldn't tell.
Q. Had it been a week or a month?
A. Oh, longer than that.
Q. Some months?
A. Oh, yes, sir. I would say for maybe eight or ten months.
Q. You say they got on the car and went to Hill City?
A. I couldn't say where Mr. George Brown went, but his wife and two children did go out there. I put his little boy on the car.
Q. You put the little boy on the Hill City car?
A. Yes, sir.
Q. Was Mrs. Brown with them?
A. Yes, sir; she was along.
Q. In which direction was it going?
A. It was going along towards north.
Q. Going towards Hill City or from Hill City?
A. Towards Hill City.
Q. Now Preston, what time was that?
A. I suppose that was about, as near as I can come at it, between two and three.
Q. Between two and three o'clock?
A. In the evening, afternoon.
Q. Two or three o'clock in the afternoon?
288 A. Yes, sir.
Q. Was that on the day that Ed. Johnson was lynched?
A. Yes, sir; it was the day. It wasn't of a night.
Q. Did Captain Brown go with them?
A. No, sir; the captain didn't go with them.
Q. Did he stay at the jail?
A. Yes, sir; I left him at the jail.

Q. Did he tell you, or did anybody there tell you, why they were leaving?

A. No, sir.

Q. Did you ask them?

A. No, sir; I didn't consider that to be my business altogether.

Q. And you were not told why they left?

A. No, sir.

Q. Did Captain Brown know that his wife and children were leaving?

A. Oh, yes, sir; he was aware of that.

Q. How do you know that?

A. Because me and him both—he stood in the door while I put them on the car. I know he must have seed them as they went by.

Q. How long did Captain Brown stay there?

A. I couldn't tell. I went home then to see about putting my children away, to come back, and when I come back there was nobody there but Mr. Gibson and the sheriff, I believe—Sheriff Shipp and Mr. Gibson.

Q. What time was that when you came back?

A. It was between eight or half-past eight. It might have been a quarter to nine, probably. I don't know.

289 Q. When did you leave in the afternoon?

A. I left shortly after putting those children on the car.

Q. Where did you go to get your children?

A. Then I was living on No. 8 Sycamore street alley, in Mr. Fague's property, and I went there to get an old lady to take my children, by the name of Billis, to keep them that night.

Q. What time did you say you left that afternoon?

A. It was, I guess, near three o'clock, as near as I can come at it.

Q. Before you left, what deputies did you see there at the jail, if you saw any?

A. Well, enduring of the feeding hour, just before I left, I don't know; but enduring of the feeding hour, there was a numerous host there, you know, just to go through the jail. I had to carry a dinner up and down, and I remember seeing a number of the deputies. I knew them.

Q. Tell us who you remember seeing there.

A. Frawley was in the office, the bookkeeper, where he always stays; and Mr. Galloway was there at that time; Mr. Baker, Mr. Richardson, and Mr. Joe Shipp—young Joe, I mean.

Q. Was he a deputy or not?

A. He acted in that *com*pacity.

Q. He was there. Go ahead.

A. Yes, sir; and I think Mr. Yarnell was there at that time. I am not sure about Mr. Yarnell, but I think he was.

Q. What is this hour that you speak of as feeding time?

A. The feeding?

290 Q. Yes.

A. The regular feeding hour is half past two, but I fed them that day strictly at two.

Q. Is that the feeding of the prisoners, do you mean?

A. Yes, sir; the prisoners.

Q. When do the deputies take their meals, regularly?

A. The deputies didn't eat there only at night, when they was guarding, so said, the jail.

Q. You say you fed the prisoners at two o'clock?

A. Yes, sir.

Q. Was there anybody else there besides these deputies that afternoon?

A. Oh Lord, yes, sir; there was a crowd there.

Q. Name some of the people who came there to the jail that afternoon.

A. There was a lot of men there that I just naturally couldn't call the names of. They was going through and through the jail, you know, seeing Ed. Johnson, and I just naturally couldn't call all of those names.

Q. There were a good many people there?

A. Yes, sir; there was a good many.

Q. Did you hear anything said about anything the Supreme Court had done?

A. Yes, sir; I heard that.

Q. Who was talking about that?

A. Well, Captain Brown told me that a telegram had come, which I had seed it, that there was one come there. A boy brought something there. They said it was a telegram. Of course I didn't read it.

Q. You did not see the telegram yourself?

291 A. No, sir.

Q. That was before you left?

A. Yes, sir.

Q. You do not know what was in it?

A. No, sir; I couldn't say that.

Q. Did you hear any of the deputies say anything about any telegram?

A. Well, after so long a time, Captain Shipp says, "Now, what will you do?" just so, and Mr. Frawley or Mr. Brown said, "Now, you are the sheriff. It is up to you about what to do." They said: "You are the sheriff."

Q. What time did you go away?

A. Well, I think it was near three o'clock.

Mr. PRITCHARD. He did not finish his answer.

Mr. SANFORD. I asked him another question. He may go ahead, if you want him to.

Mr. PRITCHARD. Well, if you asked another question, never mind.

Q. (By Mr. SANFORD.) What time did you leave?

A. I think it was near three o'clock, as near as I can come at it. I wouldn't like to be definite on it, because I wasn't looking to have to swear to it. I don't know the time exactly.

Q. Were you there at supper time?

A. I got there, maybe it would be a quarter to nine, or half past eight.

Q. Were you there when they had supper? Were any of the deputies there that night when they had supper?

A. They didn't particularly have supper that night. When
292 I went off, I met Captain Shipp in his buggy, and he says, "Walker, have you fed?" I told him that I had, and he says, "Well, I am glad to meet you. I don't"——

Q. I am not asking what he said about it. I asked if you were there at the supper time with the deputies?

A. Well, yes, sir; I was there at lunch time.

Q. At lunch?

A. Yes, sir.

Q. When was that?

A. I expect that was about nine o'clock. I couldn't say.

Q. Nine o'clock at night?

A. Yes, sir.

Q. Do you mean to say the deputies lunched there at nine o'clock that night?

A. Why certainly I do.

Q. Were you there at nine o'clock at night?

A. Why, yes.

Q. When did the mob come to the jail?

A. Well, I couldn't say about the mob coming to the jail, but the men which I saw there, as well as I could discover and describe them, a portion of them was already there, as far as I could say about it.

Cross-examination by Mr. PRITCHARD:

Q. How many of the deputies were at the jail at nine o'clock, Pres?

A. Well, I can tell you. I couldn't get them up, but I can tell you by the names.

293 Q. Just relate the names.

A. Well, Mr. Frawley was there.

Q. One.

A. Young Joe Shipp was there.

Q. Two.

A. Mr. Galloway was there.

Q. Three.

A. Not Mr. Galloway. I beg your pardon on that.

Q. Take him off.

A. Mr. Baker was there.

Q. Three.

A. Mr. Richardson was there.

Q. Four.

A. Mr. Perkins, he was there.

Q. Five.

A. I don't want to make a mistake on it.

Q. Oh, no; go on.

A. I won't say there was any more there than I know was there.
Q. Think if there were not more there.
A. Well, probably there mought have been. I couldn't say there was any more.
Q. There were at least five, and probably more, there at nine o'clock that night.
A. Yes, sir.
Q. The deputies ate lunch there about that hour?
A. Yes, sir.
Q. How long did they remain there after nine o'clock?
A. I don't think they remained there very long.
Q. It took them some little time to eat their lunch, though?
294 A. Not very long. It was only ham sandwiches and beer.
Q. What did you say they had?
A. Sandwiches and beer.
Q. You saw that telegram the boy brought?
A. I saw him bring a paper there.
Q. What sort of a boy was it?
A. It wasn't a boy. It was a white man.
Q. Was he a telegraph messenger?
A. I don't know. I am not familiar with those people.
Q. Did he have any label on his cap, or anything to indicate that he was a messenger?
A. Well, I don't think he did.
Q. Did he come on a bicycle or did he walk?
A. I was laying up in there on that bench back in there. I don't know.
Q. What time of day was that?
A. Well, it was getting along pretty late.
Q. What do you mean by that, Pres.?
A. Well, it was near feeding time, of course.
Q. What do you call feeding time?
A. I told you I fed at two o'clock.
Q. It was not later than two, was it?
A. Well, I couldn't say. I didn't keep the correct time.
Q. It was about two; in the neighborhood of two o'clock?
A. Yes, sir.
Q. It was before they fed, about feeding time?
A. Yes, sir; about that time.
Q. Before they fed, and about two?
A. Yes, sir; I know I dished up the dinner.
295 Q. Who did he hand that telegram to; Mr. Brown?
A. I disremember whether Mr. Brown or who it was.
Q. Some of the officers got it?
A. Yes, sir.
Q. Mr. Brown told you he got it, you say?
A. Yes, sir; Mr. Brown is the man told me they had a telegram.
Q. Mr. Brown told you they had it?

A. Yes, sir.

Q. Did Mr. Brown sign for the telegram?

Mr. SANFORD. I note an objection as to what Mr. Brown told him.

Mr. PRITCHARD. It is an admission of the defendant. Mr. Brown is a defendant.

Mr. SANFORD. I understand; but I object to admissions of the defendants in their own favor.

Mr. PRITCHARD. It is not in our own favor. We are proving the receipt.

The COMMISSIONER. Note the objection.

Q. (By Mr. PRITCHARD.) Did Mr. Brown sign for it on a little book the boy had?

A. I couldn't say who signed for it.

Q. Did you see him sign it?

A. I don't remember whether he signed or not.

Q. You saw the man hand it to him?

A. I wouldn't be positive.

Q. Did the man pull a little folded yellow sheet out of his pocket and have Mr. Brown sign his name on it?

296 A. I couldn't say that. They went right out of the main jail office into Fred Frawley's private office, where he writes and keeps all his books at.

Q. And that was done right there in Frawley's pesence, too? Frawley was there?

A. Well, I think he was.

Q. And Richardson was there?

A. I don't know whether he was exactly in there.

Q. You said he was, did you not?

A. Oh, I said he was at the jail. I didn't go into more particulars.

Q. Yarnell was there.

A. I think Mr. Yarnell was there at the time.

Q. Now, tell us somebody else who was there at the time the telegram was delivered.

A. I have told you, Mr. Pritchard.

Q. I want you to tell me over again. I forget. I want you to tell me the names of some of the other people who were there at the time of the delivery of this telegram, besides Richardson and Frawley and Yarnell.

A. And Captain Brown.

Q. Who else?

A. I don't think I told you anybody else.

Q. I am asking now if there was anybody else there.

A. I don't remember that there were.

Q. Were not some of these other people who were passing in and out there?

A. Yes; they generally at that time was going up to see Johnson. I am talking about the men who was right there. I don't remember who they was.

297 Q. Do you not remember anybody who was going up at the time that telegram was delivered?

A. Well, if I would study maybe I could bring some of them to remember.

Q. Well, study.

A. There was a lot of colored and a lot of whites there at that time.

Q. Well, study and tell us the names.

A. I don't know. I can't commit them to memory just now.

Q. Were there more colored people or more white people going up at that time?

A. There were more white people at that time.

Q. But there were quite a number of colored people?

A. Yes, sir.

Q. And they went up and saw Johnson?

A. Yes, sir.

Q. They were passing along there at that time?

A. I don't know whether they were passing along at that particular time or not.

Q. You are a cook?

A. Yes, sir.

Q. You were formerly a deputy sheriff?

A. No, sir; I didn't say that. I was three years under Sheriff Skellern.

Q. That means a while ago. You were formerly a deputy sheriff?

A. If you had said ex, I would have understood you, but you said "formerly." I didn't know what you meant.

298 Q. If I had said "ex-deputy sheriff," you would have understood me, but when I asked you if you had formerly been a deputy sheriff, you did not understand that?

A. No, sir.

Q. Can you read and write?

A. Well, sometimes.

Q. Can you write?

A. A little.

Q. About how much can you write?

A. About average to attend to a common nigger's business.

Q. Can you write anything more than write your name?

A. I don't know. I used to think I could.

Q. Well, can you now?

A. Well, I could write some and let you be the judge.

Q. Can you write, then? Can you answer whether you can write or not?

A. I think so; yes.

Q. Without any discussion about it, you think you can, but you are not certain whether you can or not. How long were you cook at the nail?

A. About eighteen months, I guess. I don't know.

Q. What made you quit?

A. I will tell you exactly what made me quit.

Q. Yes.

A. Me and one of the trusties got in some words there one morning, and I chased him upstairs, and Mr. Frawley and nobody was there then but young Joe Shipp, and he run up and told Mr. Shipp not to let me hurt him, and Mr. Shipp told me to go back now and behave myself; and I just picked up my things and left.

299 Q. That was one of the trusties. Was that a colored boy?

A. I believe it was, or man.

Q. A colored man?

A. Yes.

Q. You mean by a trusty a prisoner in the jail who is allowed certain liberties for doing certain service around the jail?

A. I don't know what you call him for doing. He was a trusty. He was trusty enough not to run away. I know that.

Q. The fact of the business is, though, you were kept there as a cook until you were caught stealing the provisions from the prisoners and were discharged for that, is it not?

A. There ought to be a matter of record of that.

Q. I am not asking whether it ought to be a matter of record.

A. Well, no.

Q. Is it not a fact that they caught you stealing the provisions of the prisoners, and discharged you for stealing?

A. No; there never has been anything said about it until now. It is a wonder I hadn't been put in jail for it.

Q. That is not the question, Pres., whether you ought to have been put in jail for it or not. That is altogether likely, but I am asking you whether or not that is a fact?

A. No, sir; it ain't a fact.

By Mr. STANFIELD:

Q. Walker, who was the man who had charge of the electric plant in the rear of the jail at that time ?

A. Who was the man that had it?

Q. Who was the man who had charge of the electric plant

300 in the rear of the jail at that time?

A. Well, I guess it was Mr. Taylor. I couldn't say.

Q. Don't you know it was Mr. Taylor?

A. Well, he was down there firing the boilers, but the electricity is usually turn on, when I was cooking up there at night, for the guards, and he goes to the bridge. I notice him fix the electric lights.

Q. Is it a fact that Mr. Taylor trims the lights on the country bridge every day?

A. Yes, sir.

Q. And has charge of the electricity and the electric light plant in the rear of the jail during the day time—the machinery down there?

A. Oh, yes, sir; he fired those boilers.

Q. Don't you know that is his exclusive duty, to look after the machinery there in the daytime?

A. Well, I don't know about that.

Q. You were there eighteen months?

A. Yes, sir.

Q. You saw him there all the time?

A. Yes, sir.

Q. You saw him doing that duty all the time?

A. Yes, sir; he fired them boilers until he would go off to the bridge, or until he had a call out to arrest somebody, and then I or one of the trusties fired it.

Q. What were Mr. Taylor's hours there; do you know?

A. No; I does not.

Q. Does he have any duties to perform there at night?

A. Not as I know of.

301 Q. Is it not a fact that his watch ended at six o'clock in the evening? Don't you know that to be a fact?

A. No, sir; I do not.

Q. Did he stay there at night?

A. I have seen him there at nights.

Q. Did he have any duties to perform there at night under his employment?

A. No more than I would see him go out and make arrests, etc.

Q. Did you ever see him make an arrest?

A. Indeed I have.

Q. When?

A. There was a darkey once that they turned out of the jail there, and he went down and got him and brought him back.

Q. Did you see him make the arrest?

A. Yes, sir.

Q. Were you with him?

A. I was there when he went after him.

Q. Were you with him when he made the arrest?

A. I wasn't exactly down on the corner of Seventh and Walnut when he arrested him.

Q. Who was with him at the time?

A. Nobody was with him. Me and Mr. Brown was up there, and the message come from over at the court-house to go down there and get the darkey, and he went down there and got the darkey, and did bring him back.

Q. Nobody was with him at all?

A. Nobody was with him but Tom Taylor, himself.

Q. Do you know what time he went on duty in the mornings?

302 A. Yes, sir; me and him used to meet up with one another and go there together.

Q. What time was it?

A. Sometimes about five; sometimes half-past.

Q. There was a night man there who had charge of the electric plant, was there not—a night man and a day man?

A. I never did see the night man.

Q. Don't you know as a matter of fact there was a night man?

A. I believe there was, but if you want me to go on just what I believe, I can tell a whole lot.

Q. Did you ever see a man there at night in charge of that electric light plant?

A. No, sir.

Q. Do you know whether or not Mr. Taylor was a deputy sheriff or whether or not he was an electrician?

A. I don't know. I know he fired those boilers down there, and he made that electric battery make lights every night. I don't know about them, but I know he fired those boilers and arrested men when he was called on.

Q. Do you know that he trimmed the lights on the bridge?

A. I know he used to trim them; yes.

Q. And had charge of the lights in the court-house?

A. I have seen him trim them behind the jail, and take a man and go out on the bridge and trim them on the bridge.

Q. Do you know that there is electric machinery there in the rear of the jail?

A. I have seen him trim them two big lights back of the jail, and I have seen him trim them on the bridge.

Q. At the time Mr. Taylor made this arrest, did he have
303 a warrant?

A. Well, he just had an order.

Q. Did you see any warrant he had?

A. No, sir; he didn't have any, as I know of.

Q. You do not know what the occasion was of his going down there, whether he made an arrest or not? You did not go with him?

A. It was a mistake. They said somebody was turned out from the court-house, and that he was free, and there was another charge against him.

Q. Was Mr. Taylor deputized specially to do this work or not, at the time? Was he authorized by some officer to do this special work at that time?

A. I didn't hear anybody say anything.

Q. Who ordered him to do this work at the time he made this arrest?

A. It come from the court-house. I can't say.

Q. You never heard the order given to him at all?

A. He said he was going out to get him.

Q. You never heard the orders given? Answer my question.

A. No, sir.

Q. You don't know who sent him?

A. No, sir; I couldn't say.

Q. You do not know by what authority he made the arrest?

A. No, sir.

Q. In fact, you do not know whether he made an arrest at all?

A. Oh, yes, sir; he brought the nigger back, whether he made any arrest or not.

304 Q. Were you with him?

A. No; I was not.

Q. What time of the day was it that you put Mrs. Brown and the children on the car?

A. Well, it was between two and three; somewheres along there.

Q. About three o'clock?

A. Yes, sir; somewheres along there.

Q. Did you put Mrs. Brown——

A. I didn't put Mrs. Brown on the car. I put her little buster baby on the car.

Q. Who was with them at the time you put them on the car?

A. I don't know who else was on the car. There was nobody.

Q. Who went from the jail with the children at the time?

A. Nobody.

Q. No one at all?

A. Nobody but me, and I went on behind.

Q. How old are those children?

A. I couldn't tell their age.

Q. About how old?

A. Buster looked like he would be about three years old.

Q. Buster Brown, about three years old?

A. He looked like it, from his size.

Q. How many children were there?

A. There was two.

Q. How old was the other child?

305 A. I couldn't say. He looked to be about eight or nine.

Q. One about three and the other about eight or nine?

A. Yes, sir.

Q. Was there another gentleman along with those children at the time you put the children on the car?

A. If there was, I didn't remember it.

Q. Did Mr. Brown's father eat dinner with him that day at the jail?

A. I disremember whether he did or not. He was usually around there though.

Q. Mr. Brown's father was usually around there?

A. Yes, sir; he was usually around there.

Q. I will ask you if it is not a fact that Mr. Brown maintained a home in Hill City at that time?

A. Yes, sir.

Q. He had a home in Hill City and a home at the jail also?

A. Yes, sir.

Q. He stayed part of the time in his home at Hill City and part of the time at his home at the jail?

A. Yes, sir; he did so.

Q. About what part of the time did Mr. Brown spend at his home in Hill City?

A. Well, usually he would go over there frequently.
Q. About half the time, or more than half?
A. Well, about.
Q. About half the time?
A. Yes, sir; every night or two he would go over there.
Q. About one-half of the time Mr. Brown with his family
306 spent at his home in Hill City?
A. Yes, sir.
Q. It was not anything unusual for Captain Brown [illegible] the jail with his family and spend the night in Hill City [illegible] me there, was it?
A. No, sir.
Q. There was nothing about that to excite your suspicion at that time?
A. No, sir.
Q. And you had frequently put his children on the car before that?
A. Yes, sir.
Q. You had frequently done that?
A. Yes, sir.
Q. About half of the time you had done that?
A. I was usually all the time putting them on.
Q. On an average you did that every other day?
A. I couldn't say.
Q. On an average, half the time?
A. Yes, sir; about half the time he would go over home.
Q. Do you remember whether or not Mr. Brown's father ate dinner with him that day?
A. I couldn't say whether he did or did not.
Q. You say you do not remember whether there was anybody with the children at the time you put them on the car?
A. No, sir; I don't think so, though.
Q. Were there some other ladies at the jail that afternoon to see Mrs. Brown, shortly after noon?
A. No, sir.
Q. Did you notice about that?
307 A. No, sir.
Q. Where were you between twelve and two o'clock that day?
A. Twelve and two?
Q. Where were you?
A. I was there.
Q. Whereabouts?
A. I was part of the time in the office and part of the time downstairs.
Q. Were you in a position to see if any ladies had come there to visit Mrs. Brown between twelve and two on the 19th of March?
A. I don't think I could have been. I was fixing dinner near about that hour.

Q. I believe you say it was about three o'clock that you put these children on the car?
A. Yes, sir.
Q. Mrs. Brown did not go at that time?
A. Mrs. Brown got on the car, her and the——
Q. Just answer my question. Mrs. Brown did not go at that time?
A. Yes; she got on the car to go.
Q. With the children?
A. Yes, sir.
Q. You are sure about that, are you?
A. I am pretty sure of that.
Q. Are you sure or not sure?
A. I say I am pretty sure of that.
Q. What does "pretty sure" mean?
A. I just mean to tell you that she went.
308 Q. Do you mean to tell me that Mrs. Brown got on the car with those children at three o'clock?
A. Yes, sir; that is what I mean to say.
Q. Did you not state just a minute ago that Mrs. Brown did not go with the children?
A. No; I did not. I told you Captain Brown didn't go.
Q. You say that Mrs. Brown went with those children at three o'clock?
A. Yes, sir; I do.
Q. You are just as sure of that as of anything else you have testified in your testimony to-day?
A. Why, indeed so.
Q. You are positive about it?
A. I know it.
Q. There is no mistake about it?
A. Oh, no.
Q. Mrs. Brown went with those children at three o'clock on the 19th of March?
A. Yes, sir.
Q. What time did Captain Brown leave there?
A. I ain't axed.
Q. About what time?
A. I wasn't there.
Q. What time did you leave?
A. I left a little after three, I guess.
Q. Captain Brown was there when you left?
A. Yes, sir.
Q. What time did you return to the jail?
A. It might have been a quarter to nine.
Q. And Captain Brown was gone?
309 A. And Captain Brown was gone.
Q. There is no mistake at all but what Mrs. Brown, Captain Brown's wife, got on the car with those children at three o'clock, or about three o'clock?

A. That is what I said.

Q. If you are mistaken in that, you are mistaken in everything you have said?

A. Well, I will leave the gentlemen and you to be the judge about that.

Q. Is not that so?

A. I couldn't say about that. You can be the judge of that.

Mr. SANFORD. If the Commissioner please, I find we have no more witnesses to put on the stand this afternoon, I am sorry to say.

Mr. PRITCHARD. I will not be able to be here to-morrow, but the gentlemen associated with me will take charge of the examination.

The COMMISSIONER. By agreement of all parties, we will adjourn until to-morrow morning at ten o'clock.

(The hearing, at 3.35 o'clock p. m. was adjourned until Friday, February 15, 1907, at ten o'clock a. m.)

310 CHATTANOOGA, TENNESSEE, *February 15, 1907.*

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland; and counsel for the various defendants.

Mr. SANFORD. Mr. Commissioner, we have no witnesses present, and we would like to ask a recess until 2 o'clock this afternoon. We have only one witness we could examine at this time, and it will expedite matters to take a recess until 2 o'clock.

Mr. PRITCHARD. That is all right, as far as we are concerned. We will be glad to accommodate ourselves to anything that suits the court and the Government.

Mr. LYNCH. We would like to have some indication from you, Mr. Sanford, if you can do it without prejudice to your case, as to how long you will continue and about when you will adjourn. That is for the convenience of counsel in making their engagements.

Mr. SANFORD. Surely. I will state that from the best indications now I think the Government will be through with the available witnesses to-morrow, and that we will then ask for a postponement of the hearing.

Mr. LYNCH. How long would you like to adjourn for then?

311 Mr. SANFORD. That will depend entirely on the commissioner as to when he can resume the hearing.

Mr. COOKE. An adjournment can be taken to an indefinite time, and the commissioner can fix the time later.

Mr. SANFORD. I have not talked with the commissioner. We can bring that up and see whether we can agree on a time. I take it that the commissioner's duties will depend upon the sittings of the Supreme Court. The commissioner will probably be unable to be present when the Supreme Court is in session.

Mr. COOKE. Will the commissioner indicate to us about when the next recess of the Supreme Court will occur?

The COMMISSIONER. I expect to be able, perhaps to-morrow afternoon, to give you some definite information; certainly on Monday morning. We will take a recess now until 2 o'clock.

A recess was thereupon taken until 2 o'clock p. m.

AFTER RECESS.

The hearing was resumed at 2 o'clock p. m.

Mr. SANFORD. I desire to offer in evidence an editorial in the Chattanooga News of Monday, March 19, 1906, headed "The Johnson Case Again." This paper has already been identified. This is the same file, you remember, that was identified by Mr. Rice. It
312 has been in the possession of the commissioner. I desire to introduce t.[illegible] editorial, and I ask that it be copied into the record.

Mr. LYNCH. We make the same objection as before.

Mr. CLIFT. We object to it because it is incompetent and irrelevant.

Mr. SANFORD. Will you let it be copied, subject to your objection?

Mr. CLIFT. Yes; let it be copied. Just read it.

The newspaper article referred to was read in evidence by Mr. Sanford, and is in words and figures following, to wit:

313 "THE JOHNSON CASE AGAIN.

"The public seems to have an erroneous idea of the situation in the Ed. Johnson case. Briefly, the appeal which stops the execution of the negro to-morrow is from Judge Clark's court, at Knoxville, and not from the state court of this county. The attorneys for the condemned prisoner applied to the federal court for a writ of habeas corpus. After hearing the case several hours at Knoxville, Judge Clark denied the application. Before entering upon the consideration of the application for writ of habeas corpus, Judge Clark ruled that the side which lost could appeal from his decision. He decided the case against the negro, and now an appeal has been taken to the Supreme Court of the United States. The higher court can now either uphold or reverse Judge Clark's decision. If Judge Clark is upheld, then the negro will be brought before Judge McReynolds again for a new sentence. If Judge Clark is overruled and the writ of habeas corpus allowed, then the case will be heard upon its merits; and if it be found that the negro has been deprived of his constitutional rights the case will probably be remanded for another hearing.

"The general impression among lawyers is that the Supreme Court will uphold Judge Clark. If it does it will be thirty or sixty days before Johnson can be legally executed, as we understand the case.

"All of this delay is aggravating to the community. The people of Chattanooga believe that Johnson is guilty and that he ought to suffer the penalty of the law as speedily as possible. If by legal technicality the case is prolonged and the culprit finally escapes,

313½ there will be no use to plead with a mob here if another such crime is committed. Such delays are largely responsible for mob violence all over the country."

314 J. T. BARNES, a witness produced on behalf of the United States, having been first duly sworn, testified as follows:

By Mr. SANFORD:

Q. You live in Chattanooga, Mr. Barnes?

A. Yes, sir; Hill City, rather.

Q. In what business are you engaged?

A. Reporter for the Chattanooga News.

Q. How were you engaged in March, 1906?

A. I was then court reporter for the Chattanooga News.

Q. Did your occupation give you occasion to be around the courts very much—around the jail, etc.?

A. Yes, sir.

Q. Are you familiar with the general run of the proceedings from the time that the negro Ed Johnson was arrested until the night of the lynching, in a general way?

A. Yes, sir; fairly well.

Q. During that time, Mr. Barnes, what was the state of public feeling?

Mr. CLIFT. We object to that.

The COMMISSIONER. Note the objection.

Mr. LYNCH. We want to state the ground of the objection. The objection is this: It is competent for the witness to state anything he heard in fact, but it is not competent for him to state generally what was the state of public feeling. That is, he can state the facts and let the court judge from the facts stated by him what the feeling was. For instance, if he heard anyone present say anything, he can state what that was, or if he heard any number make statements, he can give in detail what the various persons said; but we sub-

315 mit it is not competent to make just a general statement as to what his opinion is of the state of public feeling, because that would be no fact.

The COMMISSIONER. Note the objection.

By Mr. SANFORD:

Q. Just state, Mr. Barnes.

A. Well, I heard some people say, at least, that feeling was high, and that they were dissatisfied with the law's delay in reference to the Johnson case. I of course can not remember any particular individuals who made such a remark as that to me, but there were several.

Q. Was there a state of public excitement and uneasiness, or was there not, during that time?

A. I think there was.

Q. Was Johnson guarded during his trial in an unusual way?

A. Yes, sir; I think so.

Q. Mr. Barnes, was it at first decided that there should be an appeal prayed to the Supreme Court from the conviction of Johnson? When he was first tried and convicted, was there an appeal prayed?

A. No, sir; I think the attorneys who were——

Q. I did not ask you who did it. I just merely asked the fact whether there was an appeal prayed?

A. No; there was not, I think.

Q. Then when an appeal was not prayed, were these habeas corpus proceedings instituted in another court, in the federal court?

A. Yes, sir.

316 Q. Were those proceedings instituted by white or colored lawyers?

A. By colored lawyers, I think.

Q. Did the institution of that habeas corpus proceeding, after his attorneys had not appealed in the other case, diminish or increase the feeling on this question?

Mr. LYNCH. May it please the court, we object to that, for the very apparent reason that that, at most, could be the opinion of the witness. He can only give the facts, and not a mere opinion as to the effect, in a general way, of the action.

The COURT. Note the objection.

A. Well, it seemed to increase the tension among certain classes of citizens. Of course the conservative classes said nothing, practically, as a general rule, I should think.

Q. I mean, now, among the class from which a mob was to be expected, the lawless element?

A. Yes, sir; I think so.

Q. What effect was produced upon that class by the news that the Supreme Court had granted an appeal?

A. Well, it had a tendency to increase that feeling, I thing.

Q. Were you in a position to ascertain, and did your duties as a reporter carry you around in different places? Did it get you in touch——

Mr. LYNCH. We are objecting to all this along the same line, for the same reason.

Mr. SANFORD. Yes; it is understood the objection need not be repeated every time, but that you make the same general objection.

A. How is that question?

317 By Mr. SANFORD:

Q. Did your business as a reporter require you to see different people and talk with them and keep in touch with sentiment on matters of that sort?

A. Yes; considerably so.

Q. State whether or not, from what you observed of the feeling after the news that the appeal had been granted, there was or was not any reasonable ground to apprehend mob violence to Johnson?

A. I think there was some ground.

Q. Mr. Barnes, I hand you the Chattanooga Daily Times of May 29, 1906. I call you attention to an article in the second column of the second page entitled "Sheriff Shipp interviewed," with a sub-head under it, containing six paragraphs, is it not?

A. Yes, sir.

Q. I will ask you if you were then a reporter on the News on the day when that appeared in the Times?

A. Yes, sir.

Q. Did you yourself interview Captain Shipp in reference to that interview? Is that an Associated Press interview?

A. I don't know whether I interviewed him in reference to this particular interview or not.

Q. Did you interview him after it came out?

A. Yes, sir.

Q. Is that an Associated Press dispatch?

A. Yes, sir; that is marked "by Associated Press."

Q. Did Sheriff Shipp, in talking to you, question the accuracy of that Associated Press interview in any respect?

A. Yes, sir; in one.

318 Q. In what respect did he question its accuracy?

A. Well, if I remember correctly, that was in reference to the fact that he had guarded Johnson personally for about fourteen days and nights—or individually.

Q. He questioned the correctness of that portion of the Associated Press interview?

A. Yes, sir.

Q. Did he question the correctness of any other portion of that Associated Press interview?

A. As well as I remember, I think that is the only point.

Q. Did he state to you in that interview that he had with you anything about the cause of that mob?

A. How is that question, Mr. Sanford?

Q. In the interview that he had with you, did he say anything about the cause of the mob—what caused the mob?

A. Yes, sir.

Q. What did he say about that?

Mr. LYNCH. We want to enter an objection to all that line of questioning, for this reason: It is competent for him to ask what Captain Shipp said, and let him give in detail what the conversation was; but we submit it is not competent for him to be asking what he did not say—did he fail to say this or did he fail to say that or the other. It is an improper way, we submit, of examining the witness. The witness should be merely asked what he did say, and not what he did not say.

Mr. SANFORD. Mr. Barnes, I accept the correction.

By Mr. SANFORD:

Q. I do not want you to tell us all the things Captain Shipp
319 did not say. I just ask you to state what he did say.

A. Well, I can't remember all that he said, now.

Q. You have stated he said something about what caused the mob. On that point, what did he say?

A. As well as I remember, he said that the delay in the matter was largely responsible for the mob.

Q. Did he speak of any judicial action that had been taken?

A. Yes, sir.

Q. What action?

A. He spoke of the action of the Supreme Court of the United States.

Mr. SANFORD. I offer in evidence that Associated Press interview in the Chattanooga Times.

(The newspaper article referred to is in the words and figures following, to wit:)

319a SHERIFF SHIPP INTERVIEWED.

"Quoted as laying blame for lynching on the Supreme Court.

(By Associated Press.)

"Birmingham, Ala., May 28.—J. F. Shipp, of Chattanooga, sheriff of Hamilton County, Tenn., against whom steps have been taken by the Federal Government in connection with the lynching in that city in March, spent the day in Birmingham. Capt. Shipp says he is not alarmed over the news from Washington, and continued:

"'The Supreme Court of the United States was responsible for this lynching. I had given that negro every protection that I could. For fourteen days I had guarded and protected him myself. The authorities had urged me to use one or two military companies in doing so, but I told them I didn't need them.

"'Many nights before the lynching there had been one man on duty. I had looked for no trouble that night, and on the contrary did not look for it until the next day. That night no one was on duty except the jailer, which is the usual guard at the jail in ours as well as in other counties.

"'In my opinion the act of the Supreme Court of the United States in not allowing the case to remain in our courts was the most unfortunate thing in the history of Tennessee. I was determined the case should be put in the hands of the law as it was. The jury that tried the negro Johnson was as good as ever sat in a jury box.

"'The people of Hamilton County were willing to let the law
319b take its course until it became known that the case would not probably be disposed of for four or five years by the Supreme Court of the United States. The people would not submit to this and I do not wonder at it.

"'These proceedings in the United States Supreme Court recently appear to me to be only a matter of politics. I do not wish to appear in the light of defying the United States courts, but I did my duty, I am conscious of it, thoroughly conscious of it and I am ready for any conditions that may come up.'"

320 Cross-examination by Mr. LYNCH:

Q. Mr. Barnes, this interview that has been filed states in substance what Captain Shipp said to you that day?

A. Well, not altogether; no, sir—with the exception of that correction he made in reference to his individual protection of the prisoner, Ed Johnson, and there are probably some other things there that he did not give me at all in an interview.

Q. You mean there are some things in this interview that he did not say?

A. Yes, sir; that he did not say to me.

Q. You probably did not get this interview right?

A. I didn't take that interview. That interview was sent out by the Associated Press in Birmingham.

Q. This is the one you filed?

A. No; I had an interview with him which was published in the Chattanooga News of May 29th, I think.

Q. Captain Shipp prepared this himself, did he not?

A. Which?

Q. The one you asked for. Captain Shipp prepared it?

A. Yes, sir; he prepared part of it and dictated the other.

Q. Where is that?

A. That is in the Chattanooga News of May 29th, if I am correct.

Mr. LYNCH. Have you that?

Mr. SANFORD. I have it; yes.

Mr. LYNCH. Have you filed it yet?

Mr. SANFORD. No.

321 Mr. LYNCH. Let us see that.

Mr. SANFORD. I do not object to handing it to you, certainly.

Mr. LYNCH. You say you have not offered this yet?

Mr. SANFORD. I have not offered that; no.

By Mr. LYNCH:

Q. What paper were you working for at that time, did you say?

A. The Chattanooga News.

Q. Are you still working for the Chattanooga News?

A. Yes, sir.

Q. You say you kept up with public sentiment?

A. I said to a certain extent.

Q. To what extent?

A. Well, in so far as coming in contact with people, particularly about the courts and on the streets, to some extent.

Q. You say in your judgment this action of the Supreme Court created a great deal of feeling, and from it you anticipated a mob. Is that right?

A. Well, I said that from what people told me, they anticipated a mob or expected a mob.

Q. I wish you would state, Mr. Barnes, who told you that.

A. I said in my direct examination that I couldn't remember any particular people.

Q. Name somebody who told you that, Mr. Barnes.
A. I couldn't do that, Judge.
Q. Can you not name one man who told you that?
A. I don't think I can.
322 Q. Do you mean, Mr. Barnes, that you come here and swear that a state of public feeling was created and that you found it out by personal interviews, and from it you apprehended that a man was to be taken from the officers of the law and murdered, and you can not name a single man from whom you got that information?
A. Yes; that was somewhat general talk, and I, of course, did not pay any particular attention to who told me that.
Q. Who indulged in it? Name one person who indulged in this talk that you say was general.
A. I can't do that.
Q. You say you didn't pay any attention to it?
A. Not enough to remember names.
Q. You did not pay any attention to it enough to remember the names, when it was such talk that you apprehended murder would result from it. Is that it?
A. I suppose that is correct.
Q. That is it?
A. Yes, sir.
Q. It was not of sufficient importance and did not make sufficient impression on your mind for you to remember the name of a single human being who uttered it, and yet you now say that you apprehended that murder would result from it?
A. No; I did not say I apprehended murder would result from it. I was telling about what the opinion of people was in that connection who talked to me about it.
Q. Did you not say, in answer to the Attorney-General, that you apprehended that they would mob the negro from that
323 talk? Did you not say that?
A. I don't think I did.
Q. You did not say that. Now, I understand you to say you did not apprehend any mob from the talk you heard. Is that it?
A. Well, there was mob talk all around.
Q. I know; but I want to know what impression it made on you. That is all you give us the benefit of. You will not tell what anybody said. What impression did it make on your mind? That murder would result?
A. I think that there might be a mob.
Q. And yet it was of such little importance that it did not impress itself on you sufficiently for you to remember the name of a single man?
A. No, sir; I don't remember any individual at all.
Q. You did not remember any individual. Where were you at the time some man predicted to you that murder was going to result from

the action of this court, and what were you doing when that was predicted in your presence?

A. I don't think I can remember any specific place, judge, at all.

Q. Can you not remember any place where you were standing or where you were situated when the prediction was made that because of the action of the Supreme Court of the United States a man was to be taken out and murdered?

A. No, sir.

Q. Not one place, not one time, and not one person? Is that it?

A. No; that is not it exactly.

Q. Tell us what it is if that is not it.

324 A. Why, this was only general talk.

Q. I know; but I want some specific talk. We want to know something about it.

A. I can't give you that, because I don't remember.

Q. Where were you when the general talk took place?

A. As I said, I heard such talk as that about the courts and on the streets.

Q. About which court?

A. The county court; the court-house here in Chattanooga.

Q. Did you hear Judge Walker indulge in that talk? He is the judge of that court, is he not?

A. Yes, sir; but I didn't hear him; no, sir.

Q. Did you hear McCutcheon, the clerk of the court, indulge in that talk?

A. No; I suppose not.

Q. Did you hear any of the officers in that court indulge in that talk?

A. I don't know positively that I did.

Q. Did you hear any of the magistrates in the county court indulge in that talk?

A. I suppose not.

Q. Well, who in the county court did you hear indulge in that talk?

A. I said about the county court-house—the court-house of Hamilton County.

Q. What was the county court doing that day when you heard the talk in the county court?

A. I don't remember anything specific about those things.

Q. Do you not know, Mr. Barnes, that the county court

325 was not in session then?

A. Certainly. I did not refer to the county court at all.

Q. Didn't you, just now, say it was in the county court when you heard it?

A. No; I say the county court-house, the court-house of Hamilton County.

Q. You have got to that now. Well, what part of the county court-house?

A. I don't know.

Q. You do not know?
A. No, sir.
Q. What day was it?
A. I don't know that.
Q. What month was it?
A. I don't know that.
Q. Do you remember the year, Mr. Barnes?
A. It followed the very——
Q. The lynching?
A. No; the very crime itself. There was talk after the crime was committed.
Q. You mean after the rape, away back when that first occurred?
A. Yes, sir.
Q. That is when you heard this talk?
A. It was all along, from that on up to the time of the action of the Supreme Court of the United States.
Q. When was it? It commenced at the time of the rape and then got worse, or got better?
A. I think it was worse.
326 Q. It got worse?
A. Yes, sir.
Q. When did it begin to get worse?
A. Well, I think it was——
Q. What month?
A. It was in March, I suppose.
Q. You think maybe it was in March. A while ago you did not remember the month, did you, Mr. Barnes?
A. I don't remember that you asked me the month.
Q. You do not remember that I asked you a while ago what month it was, and yet you now come here and remember that the sentiment of the people of this county was such that you apprehended a mob. Now, Mr. Barnes, you say you apprehended a mob. You went to Captain Shipp and warned him about that mob, did you?
A. No, sir.
Q. Well, you went to the chief of police here and warned him about a mob coming, did you not?
A. No, sir.
Q. You did not?
A. No, sir.
Q. You went to Judge McReynolds and warned him about that mob?
A. No, sir.
Q. Oh, it was Attorney-General Whittaker you went to and warned that a man was going to be murdered here?
A. No, sir.
Q. You did not do that?
A. No, sir.
327 Q. You warned the public through the press here that the man was going to be mobbed? You wrote it up and warned the

public, did you not, and called them to arms to resist this attempt at murder that was going to be made, did you not?

A. No, sir; I think not.

Q. You were out looking for news. If you did not have any interest in the man's life, you were looking for news, were you not?

A. Yes, sir.

Q. And yet you did not publish that as a news item, did you?

A. I just simply published developments as they came.

Q. Did you publish any developments with reference to the probable murder of this man then in jail, or lynching him? Did you say one word about the probability of this man being lynched after the Supreme Court order?

A. I don't remember of any.

Q. Don't you remember that you did not?

A. No; I don't remember that.

Q. You don't remember anything about that?

A. No, sir.

Q. Well, if you did, you could find it in the columns of your paper, could you not?

A. Yes, sir.

328 ROBERT K. LYON (colored), a witness produced on behalf of the United States, was duly sworn by the commissioner according to law, and testified as follows:

By Mr. PENFIELD:

Q. Is your name Robert Lyon?

A. Yes, sir.

Q. Where do you live, Robert?

A. Chattanooga.

Q. How long have you lived in Chattanooga?

A. All my life.

Q. You were here then in March, 1906?

A. I was.

Q. Do you remember the occasion when Ed. Johnson was taken from the county jail and lynched?

A. I do.

Q. Where were you that night, Robert?

A. I were at work.

Q. Where do you work?

A. Sam T. Light's.

Q. When did you first learn that there was any trouble at the county jail?

A. Why, I had heard some rumors of it Sunday.

Q. Sunday?

A. Yes, sir; and I went up at the jail Sunday in the afternoon. I never knew anything about any trouble, any lynching, until I was leaving my house that night.

Q. Who did you hear say anything about it at the county jail?

329 A. I never heard anybody say anything at the county jail, sir.

Q. I understood you to say you learned something of it up there?

A. No, sir; I was just up there to see the prisoner.

Q. When did you first hear of the lynching?

A. On my leaving my work, I met a couple of gentlemen who were going on the east side of 6th street from the west side, going across on the east side, and I heard the remark of one of these gentlemen. He said, "Come, let's hurry. They are going to take that nigger out."

Q. What did you do then?

A. I stopped on the corner to wait a while, and they continued on up 6th street. So I guess——

Q. Was that towards the county jail?

A. Yes, sir.

Q. What did you do?

A. I continued to follow behind them.

Q. Did you go to the jail?

A. No, sir; I never gone to the jail. Before I got to the jail, when I was between Cherry and Walnut street on 6th street, I heard somebody yell, and I continued on up. By that time they had crossed, going on over Walnut street in a north direction. When I got to the corner of Walnut and 6th street, they were nearing the corner of 5th and Walnut, and somebody yelled again.

Q. Who do you mean by "They?"

A. The crowd.

Q. Was that crowd going away from the county jail?

330 A. Yes, sir; leaving the county jail.

Q. Were they approaching towards the county bridge?

A. Yes, sir.

Q. Go ahead and state what you did further.

A. I continued on down 7th street and on down Walnut street, and when I got at the corner of Walnut and 6th somebody yelled again up there in the neighborhood of Foster B. Brown's residence, where he used to live. I got close enough then to hear somebody in the crowd that had this man out in the street. I don't know who they had; but there was a crowd of them around—looked to be 25 or possible 20.

Q. How close was that to the bridge?

A. Oh, that was quite a distance away from the bridge then. That was between 5th and 6th.

Q. Did they stop there?

A. No, sir; they didn't stop there, but they told them they would have to cease this noise, and everything went on quietly then, only just the mumbling talk, going along down to the bridge.

Q. Did you follow on after the crowd?

A. I did, sir.

Q. How close after the crowd of men who had charge of the prisoner were you?

A. About half a block, or a little over that, sir. I was a little over half a block away.

Q. State what further occurred?

A. I continued on down Walnut to 4th street. I meets a
331 white gentleman down there. He seemed to be intoxicated with liquor.

Q. You need not state what was said by him. I am not asking about the conversation.

A. Myself and him accompanied on down to the bridge, to 1st street.

Q. Did the crowd that had Johnson stop on the bridge?

A. They did.

Q. How far on the bridge did they go?

A. Why, they were on the other end, on the north side, in the first span of the bridge.

Q. Did the entire crowd move out as far as the place where they took Johnson, or did part of the crowd stop? State how the fact was.

A. The crowd that was in front of me continued on where they circled around him and put the rope over the joist to hang him.

Q. How many of the crowd were there on the bridge, would you say, in your judgment?

A. I don't know, sir. When we got to the bridge, it looked to me as though there might have been 150, or possibly more.

Q. In charge of him, immediately around him?

A. They were all around him. I don't know who was in charge of him.

Q. Did all of that crowd go onto the bridge, as far out as they took him?

A. The group that left the jail went on with him. I don't
332 know how many more joined on behind, because I was kind of on the rear end of it.

Q. Did any of the crowd stop at this end of the bridge?

A. I did myself; yes, sir, and the friend that I was with. We stopped just before we got to 1st street. There was a crowd commenced to run off of the bridge.

Q. Coming back this way?

A. In the direction that we were at that time. We were nearing 1st street. We got there, and then there was another gentleman come from the crowd. He says: "There is no danger." He says: "You will have to come up this way." I said: "I don't care to go any further." The man I were with, he said, "Well, stand here, John." That is what he called me. "We will stand here," and myself and him stood there.

Q. What did you see from where you stood? That was on the bridge?

A. Yes, sir.

Q. How far from this end?

A. Why, we was in the same span that they were, only we were on the south end and they were on the north.

Q. About how far were you from the prisoner, Johnson?

A. I guess we were about the distance of the length of the street, over there—about the width of this street, or it might have been further.

Q. About how many feet or yards, would you say?

A. I haven't the least idea, sir.

Q. You have no idea of distance?

A. No, sir.

333 Q. You mean about the distance of the width of the street. Is that what you mean?

A. I am not up on those measurements, and I couldn't give you any definite answer.

Q. What do you mean by the street?

A. The width of the bridge, I was speaking of, about the width of this street out here, I guess, or a little on the other side.

Q. That would be some thirty or 40 feet, in your judgment?

A. I suspect so.

Q. He was about that close?

A. Yes, sir.

Q. What did they do there?

A. They didn't do anything. When I got there, there was a man up on top, and somebody from the crowd below told him to come down, that he had got it over, which he did. Then somebody else hollored in the crowd, "Johnson, if you got anything to say, you say it." So Johnson made his talk. I heard the remarks: "I love you all. I am not guilty." That is the last I heard. Then they commenced to haul him up. It looks to me that he got about a foot and a half from the rail up there, where it was stopped, and the body come back down, and I think the jar, from the distance he fell, killed him. But, anyhow, these subjects that were around this body, they fired into it.

Q. How close were the men who did the firing?

A. They were all around him, sir.

334 Q. Did anybody fire any shots from behind where you were?

A. No, sir.

Q. Was there a crowd behind him and around you?

A. I think so; spectators, like myself.

Q. Did you see anybody in the crowd where he was shot or hanged, as the case might be, that you knew?

A. Yes, sir; I saw some leaving there.

Q. Now, give us the names of any you saw leaving there.

A. I saw one subject by the name of Williams, to my best knowledge.

Q. What is his given name?

A. Luther, I think.

Q. Where does he live?

A. I couldn't tell you, sir.

Q. Does he live in Chattanooga?
A. I think he do; yes, sir. He do.
Q. How long have you known Williams?
A. I have known Williams for some years.
Q. About how many? You knew him well when you saw him?
A. Yes, sir.
Q. Did he tell you anything as he came out toward you?
A. Not a word did I hear him say.
Q. Did he come fast or slow?
A. He come in a pretty rapid gait. He just come walking
335 leisurely along. He wasn't in a hurry and he wasn't anyways slow.
Q. Did he have any firearms?
A. None as I saw.
Q. You did not see any firearms?
A. No, sir.
Q. You say he did not say anything?
A. No, sir; nothing as I heard.
Q. That is one, now; Luther Williams. Did you see anybody else coming from this bridge that you knew?
A. Well, I saw one policeman.
Q. What was his name?
A. Boylston.
Q. Can you give his given name?
A. Ed, I think.
Q. Ed Boylston. That is two. Anyone else?
A. I met another subject as I was entering on the south end of the bridge. His name was Will Cooley.
Q. Did they come from the crowd immediately around Johnson?
A. I saw this patrolman, Boylston, as I were leaving the bridge, him and the other crowd that came out of a barroom on 2nd and Walnut streets. They seemed to be in there on some kind of mission. I don't know what, but the house was dark.
Q. I am inquiring now whether you saw anybody coming from the immediate point where you have told us Johnson was?
A. No, sir; I have not.
336 Q. Was Williams the only man you saw coming from that direction?
A. The only one that I knew.
Q. Was there considerable space or not between where you were and the bystanders that were around you and the crowd that were around Johnson?
A. Yes, sir; there was a space.
Q. Williams came across from the crowd around Johnson to your crowd?
A. He came from the north end of the bridge to the south end.
Q. Johnson was towards the north end?
A. Yes, sir; he was hung on the east side of the bridge.

Q. You were not at the jail, then, that night at all before Johnson was taken out?

A. No, sir; I was not.

Cross-examination by Mr. CHAMBLEE:

Q. Lyon, you say that this man you refer to as Williams came from the north end of the bridge to the south end?

A. Yes, sir; he came from the north end to the south end.

Q. And when you met him he was with a policeman named Ed Boylston?

A. No, sir; I didn't say it. I never met him. He passed me. I never met Mr. Boylston at all on the bridge. I met him down at the door.

337 Q. When this man Williams passed you were you on the bridge?

A. I was, sir; yes; right near the end of it.

Q. Where was Williams at the time the man was lynched?

A. I coudn't tell you. I am inclined to think he was back there with the rest of them, in the crowd.

Q. Do you not know whether or not Williams had passed you into town before the man was lynched?

A. I do not; no, sir.

Q. You did not see Williams have anything to do with the lynching?

A. I couldn't see anything that anybody had to do with the lynching at all, sir. I was put up there looking on. I think that all them that was around there had a hand in it, the way I can get it best rate.

Q. Were you with the bystanders, or were you with the lynchers yourself?

A. I was by myself, alone.

Q. By yourself, alone?

A. Yes, sir; I was accompanied there from 4th street to the bridge by a white gentleman. Who he was, I don't know.

Q. Were you a lyncher or were you a bystander?

A. I was not a lyncher; no, sir. I had nothing to do with it.

Q. Williams left you up there near the place and he came on towards town?

338 A. He never left me. He passed by me.

Q. He passed by you, and that put you between him and Johnson, did it not?

A. The way I knowed him was I knowed of him previous to this time. That is the reason I paid him ample attention. I had saw him before.

Q. Did you speak to him?

A. No, sir.

Q. How long was he away from there before they strung Johnson up?

A. When I saw Williams why Johnson had been strung up.
Q. This was after the lynching?
A. Yes, sir.
Q. Did you see anybody else come along there besides Williams?
A. I saw a great many people. Indeed I did.
Q. Were any of them lynchers?
A. I don't know, and I have never said that Mr. Williams was a lyncher, either. I just saw him coming from that direction.
Q. You do not know whether he had anything to do with the lynching or not?
A. No, sir; I do not. I couldn't say or swear he did, but I know he come from the direction where the lynching was.
Q. How far was this man Boylston whom you refer to from the place where you saw Mr. Williams?
339 A. Just one corner. He was at the corner there, leaving out of a barroom there.
Q. Was that some 15 or 20 or 30 feet? Were they close together?
A. Yes, sir; it might have been a little more than that.
Q. Probably about 25 feet?
A. Possibly so.
Q. Was the time when you saw Williams immediately following that when you saw Boylston come out of this barroom?
A. I will tell you. When I saw this man Boylston, in fact I saw a great many other patrolmen up there, and I am not acquainted with any of them by name. I just know them as I hear their names called and see them, but I saw a great many of them. I saw just as many policemens up there as I did anybody else.
Q. Was that at the time you saw Mr. Williams?
A. I don't know whether it was. I saw Mr. Williams and then I also saw Mr. Boylston.
Q. Turn around here w'ere I can see your face; I mean where the commissioner can see your face. Don't turn your back to the attorney-general. What I mean is at the time you saw Mr. Williams come down Walnut street and when you saw Mr. Boylston, was there a number of policemen in uniform present there at that time?
A. If I am not mistaken, I saw not less than two or three policemen come out of the same place that I saw Mr. Boylston.
Q. Was that at the time you saw Mr. Williams there
340 within twenty or thirty feet of him?
A. No, sir; that wasn't the time I had saw Mr. Williams. He had passed me before.
Q. How long before?
A. I couldn't tell you exactly.
Q. It was immediately before, was it?
A. I should think yes.
Q. When that mob came that lynched Johnson, you did not stay there to meet them and give them a reception?
A. I followed them down there for the excitement.

Q. But when they started towards Chattanooga, you did not wait to pay them your compliments?

A. A great many passed me in going, and a great many cut off and went down through those dark places.

Q. But when they were coming back, did you stay there and let the mob pass by you?

A. Some of them did; yes.

Q. How many?

A. I couldn't tell you.

Q. Then where did you go?

A. I went down to a friend's house of mine that lived just back of the bridge there, on Lookout street.

Q. What was his name?

A. Mitt Gay. I told him——

Q. I did not ask you what you told him. Then where did you go?

A. I left there and went up 2nd street to Walnut, right up Walnut to 8th, up 8th to Market, down Market to 9th, to my home.

341 Q. Where did you live at that time?

A. I lived at that time 127 Burt street.

Q. What time of night was that you saw this man Boylston come out of a barroom? Was it before or after ten o'clock?

A. It was after ten o'clock. It was between 10.30 and 11 o'clock.

Q. Don't you know the saloons close at 10 o'clock?

A. Indeed so.

Q. But still you saw these men come out of the barroom after ten o'clock.

A. It was after ten o'clock. It was nearer 11 than it was half past ten.

Q. Did they come out the front door or the side door.

A. They come out the front door. The house was dark when they came out.

Q. How long have you known Mr. Boylston?

A. I am not personally acquainted with Mr. Boylston at all.

Q. Could you identify the man if you would see him now?

A. Yes, sir; I could.

Q. Have you ever seen him since then?

A. I have.

Q. That is Mr. Boylston, you say?

A. Yes, sir.

Q. Who was the other officer you saw there, who had come out of that barroom?

342 A. As I told you before, I was not acquainted with them, and I didn't know them by name.

Q. That was the only time you saw Mr. Williams there, when he was coming down Walnut street?

A. I was not coming down Walnut street.

Q. I say when he was coming down Walnut street, coming this way, off the bridge?

A. He passed me. I never passed him.

By Mr. Hood:

Q. Did you see Mr. Boylston anywhere else except at the corner of 1st and Walnut?

A. When I saw Mr. Boylston he turned towards the north on Walnut street, going back to the bridge. I don't know whether he had a billy in his hand or a gun in his hand.

Q. Going back to the bridge?

A. Yes, sir.

Q. Have you seen him at the bridge before that?

A. Not to my knowledge; no, sir.

Q. You saw him when he came out of that saloon on the corner of 1st and Walnut and went in the direction of the bridge?

A. Yes, sir.

Q. Was he with any other policeman, do you say?

A. I think so; yes, sir.

Q. Had you seen him before that night?

A. No, sir; I don't think I had—no; I had not.

343 Q. Was there anybody else with them except the two or three people you speak of?

A. I don't know how many was behind, but there was three people coming out of the door, and there seemed to be some more back in there. The house being dark, I couldn't tell how many was there.

Q. The saloon, you mean?

A. Yes, sir.

William Tarpley (colored), a witness produced on behalf of the United States, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. Sanford:

Q. How old are you, Will?

A. Me? I am about 17 years old.

Q. Were you in the jail of this county on the night that Johnson was lynched?

A. Yes, sir; I was.

Q. How long had you been in the jail?

A. I got arrested Saturday night, and I stayed in jail until Tuesday, about 2 o'clock.

Q. Then he was lynched on Monday night, while you were in there?

A. Yes, sir.

Q. How did you happen to get in, Will?

A. They had me charged with larceny of a watch.

A. Were you tried on Tuesday?

344 A. Yes, sir.

Q. And what was the result?

A. Acquitted.

Q. Now, Will, were you on the floor that Ed Johnson was on?

A. No, sir.

Q. Where was Ed Johnson?
A. They claimed he was on the floor above me.
Q. Who was there on the floor with you?
A. Well, there was a good many on the floor with me. I couldn't name all of them.
Q. Were they white or colored persons?
A. Colored.
Q. Do you remember the mob coming there and taking Ed Johnson out?
A. Yes, sir.
Q. About what time did they come?
A. Well, let me see. It was near eight o'clock.
Q. How long were they around there, to the best of your judgment, before they left?
A. To the best of my judgment, they left near ten. I couldn't say positive the presact time.
Q. Did you recognize any member of that mob?
A. Yes, sir; one.
Q. Was it a man you knew?
A. Yes, sir.
Q. Whom you had known before?
A. Yes, sir.
Q. Who was that man?
345 A. Bart Justice.
Q. What did you see him do; or what did you hear him say? Just describe it.
A. He just went on upstairs and they was up there fumbling around, and it seems from the way he spoke that there wasn't enough to help them get in up there to where the prisoner, the man they was looking for, and he come back to the steps and hollered, "Come on up here. What in hell are you laying back down there for, God damn it? Are you scared?" And they just went piling on upstairs.
Q. Did you see him distinctly or indistinctly?
A. I seen him distinctly.
Q. How long had you known Bart Justice?
A. I had known him, well, I will say three years.

Cross-examination by Mr. SHEPHERD:

Q. You were locked up in the cell there, were you not?
A. Yes, sir.
Q. What cell were you in?
A. I forget the number of the cell.
Q. Was the door shut and locked?
A. Yes, sir.
Q. And you saw this man, Bart Justice?
A. Yes, sir; I did.
Q. With the door of your cell shut and locked?
A. Yes, sir.

Q. And he was entirely on the outside of the——
346 A. Circle.

Redirect examination by Mr. SANFORD:

Q. How did you see him, Will?

A. The way the door was fastened in there, it has got some iron bars that goes up in a cage, and the iron bars don't fit so tight that you can't see out. It leaves an opening about that much [indicating].

Q. How much is that?

A. About an inch, I guess; and there is a light right out in front of the circle, just at the foot of the steps, where you go upstairs. When the mob entered the door and made the racket we got up—I did, and was peeping out the door and looking out in the hall there.

Recross examination by Mr. SHEPHERD:

Q. What is the name you go by in police circles here.

A. In police circles?

Q. Yes.

A. Well, my name is Will Tarpley. That is my name.

Q. Don't they call you "Bad eye?" Is not that the name you have in the criminal calendar?

A. No, sir; they might call me "Keen eye."

Q. You had your keen eye with you that night when you saw Bart Justice, did you?

A. Yes, sir.

347 Q. How many times have you been indicted?

A. Well, I have been arrested. Let me see, I have been arrested three times.

Q. What for?

A. Arrested twice for fighting, and on the charge that they had me in jail that night for.

Q. Larceny?

A. Yes, sir.

Q. Fighting and larceny?

A. Yes, sir.

Q. And you are known among the police people here as "Keen eye?"

A. Yes, sir.

Q. You saw Bart Justice from your cell, and he was out in the corridor?

A. Yes, sir.

Q. There was only a crack of a half inch through which you looked out through the door and saw him?

A. About an inch, I say.

Q. Did Bart Justice have a mask on or not?

A. No, sir.

Q. He was not masked at all?

A. No, sir.

Q. Did you see anybody else there that morning?

A. Yes; I seen a lot of them.

Q. Was anybody masked?

A. I didn't see anybody masked.

Q. Nobody had any mask over his face at all?

A. No; I didn't see no mask.

348 Q. Which story of the jail were you in?

A. I couldn't tell what story I was in. From what all the prisoners said on the floor I was on, they said I must have been on the second floor. I wouldn't swear that I was on the second floor.

Q. When you went into the office of the jail, you had to go down a flight of steps to get to the place where you were, did you not?

A. Sir?

Q. You heard me.

A. No, I didn't.

Q. When you went into the jail from the office, then, to reach the cell that you were in, you had to go down a flight of steps?

A. I couldn't swear to that, even.

Q. What is the reason you cannot swear that?

A. Because I disremember.

Q. The top floor was the one that Ed Johnson occupied?

A. I didn't swear that, either.

Q. You do not?

A. No, sir; I said from what the prisoners said, Ed. was on the top floor.

Q. Then the next floor underneath Ed's was occupied by white prisoners, was it not?

A. From what the prisoners told me, it was occupied by whites.

Q. That is what the prisoners told you?

A. Yes, sir.

349 Mr. SHEPHERD. Mr. Commissioner, I think you ought to give these niggers back here a full opportunity to laugh once in a while. I think the marshal ought to take care of those fellows.

Mr. CHAMBLEE. Mr. Attorney-General, I want the privilege of recalling that man Lyon who was in here a little while ago, for further cross-examination.

Mr. SANFORD. Certainly.

ROBERT K. LYON was recalled for further cross-examination.

By Mr. CHAMBLEE:

Q. Lyon, I want to ask you to tell us, at the time you say you saw the policeman, Mr. Boylston, on Walnut street, whereabouts on Walnut street you were standing at that time?

A. I were going down Walnut.

Q. Which way was that?

A. South.

Q. That is, coming towards the United States custom-house or court-house here, from the end of the bridge?

A. Yes, sir.

Q. Whereabouts on Walnut was Mr. Boylston?

A. He was coming out of the door on the corner of 2nd
350 and Walnut, that saloon there. That is on the northeast corner going down north.

Q. Did you come, then, on towards your home?

A. Yes, sir; directly; right straight down Walnut street to 8th and 8th to Market.

Q. Was the majority of the crowd still up at the bridge, or had they come away at that time?

A. I couldn't tell you. There seemed to be about as many going as there was coming, and a great deal more.

Q. When you saw this man Boylston at the corner of 2nd and Walnut street, was that after you had gone down under the bridge to this colored man's house, or before that time?

A. That was after, sir.

Q. You had left the bridge and gone down and seen your friend who lived down there under the bridge?

A. I had.

Q. And then left his house to come back, and that is when you saw Mr. Boylston?

A. I come right down 2nd street; going back to the bridge, there was a colored fellow that met me there and asked me would I go into the bridge—if I had any objection.

Q. I did not ask you anything about the colored man. I asked you about yourself. At the time you came back and saw Mr. Boylston there was this crowd that had done the lynching still up in the bridge?

A. My dear sir, I don't know who done the lynching.

Q. Was the crowd still on the bridge at that time?

351 A. Gone, sir.

Mr. SANFORD. Mr. Commissioner, I ask an adjournment or recess of this hearing until some time about the middle of March, the date to be fixed by yourself and notice to be given to counsel on both sides. There will probably be at that time, as I understand, a recess of the Supreme Court.

Mr. COOKE. That will be satisfactory to Captain Shipp's lawyers, Mr. Attorney-General.

The COMMISSIONER. There being no objection, this hearing will be adjourned until further order of the commissioner. Counsel will be duly notified of the resumption of the sessions.

The hearing, at 3.20 o'clock p. m., was adjourned until further order.

352 CHATTANOOGA, TENNESSEE, *June 10, 1907.*

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland, and counsel for the various defendants.

The COMMISSIONER. The hearing in the case of the United States vs. Shipp et al. will be resumed. All witnesses who have been sum-

moned will retire from the room, with the exception of the secret service agent and the newspaper men.

Mr. PRITCHARD. Before the witnesses are sworn we had better see who we have here—who is represented. I do not know how the situation is.

Mr. SANFORD. That is a good suggestion.

Mr. PRITCHARD. I think we had better find out what defendants are here, and how they are represented, before we proceed. I take it for granted that they are represented, but I do not know how it is.

Mr. SANFORD. I think that is an excellent suggestion.

The COMMISSIONER. I will call the names.

The commissioner called the names of the respective parties, all of whom, with the exception of C. A. Baker and Paul Pool, answered in person or by counsel.

353 L. M. PINDELL, a witness produced on behalf of the Government, and after being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Do you live in Chattanooga?

A. Yes, sir.

Q. Were you living here last year?

A. Yes, sir.

Q. What official position do you hold?

A. I am in charge of the United States Weather Bureau office.

Q. Were you in charge on March 19th of last year?

A. Yes, sir.

Q. Do you keep a record of the weather conditions—official records?

A. Yes, sir.

Q. Have you the record there—the original record?

A. The record for 1906.

Q. I wish you would turn to March 18th and 19th, 1906, and tell us what the record shows in the matter of rain and snow on the 18th and 19th.

A. We had rain, beginning at 3.50 p. m. on March 18th, which continued at intervals up to 10.06 of March 18th; began at 11.48 p. m. March *March* 18th and continued without intermission up to 1.31 in the afternoon of March 19th.

Q. You say it began at 11 p. m., or a. m.?

A. 11.48 p. m.

354 Q. That means the night of the 18th?

A. Twelve minutes before midnight of the 18th; and ended at 1.21 p. m. in the afternoon of the 19th. A moist snow began at 4.55 p. m. of March 18th and continued at intervals to 9.05 p. m. That was what we call snow flurries, or spitting snow.

Q. What was the total precipitation of rain in the twenty-four hours—the total falling of rain or moisture?

A. The total rainfall on the 19th was one inch and one-hundredth.
Q. Is that a light or a heavy rainfall?
A. That is considered moderately heavy.
Q. What is the average?
A. The average run between 25 and 30 hundredths per day.
Q. Then it would be about four times the average?
A. About four times the average.
Q. Would it moisten the soil or not?
A. Yes, sir; that made the soil pretty soft—not the permanent pavement, but the ground that is unimproved was muddy. It would make it muddy.

Cross-examination by Mr. SHEPHERD:

Q. You are acquainted with the country from Fourth street to the bridge, are you not, on Walnut street?
A. Yes, sir.
355 Q. What sort of material was that street paved with, if paved at all?
A. From Fourth street to the bridge is asphalt.
Q. Asphalt.
A. And from Sixth street to Fourth street is chert.
Q. The body of the street was paved with asphalt from Fourth street to the bridge, was it, along Walnut street?
A. Yes, sir.
Q. And the sidewalks were made of what sort of material?
A. Some stone and some brick.
Q. From Sixth to Fifth it was chert?
A. From Sixth to Fourth.
Q. That is a hard gravel, is it not?
A. It is a hard substance.
Q. And on the slope of the hill, was it?
A. It sloped both ways.
Q. State whether or not there was rainfall enough to have made that street, Walnut street from Sixth street to the bridge, so that a man would get mud on his shoes, going over it at the time this lynching occurred.
A. Well, you get a slight deposit of sand, but not of mud; I should think it would have the effect it has just now, that an unimproved street would be made muddy. Improved streets it would not make muddy.

356 Cross-examination by Mr. PRITCHARD (on behalf of defendant Shipp):

Q. Are you familiar with Walnut street from the jail, Sixth street to Fourth, that hill?
A. Yes, sir.
Q. I will ask you to state whether you ever saw or knew, or whether it is physically possible for any mud to be or stand on that street because of rain, since it has had chert on it and rolled and fixed in its

present condition, and as it was at the time of the lynching of Ed Johnson.

A. No, sir; mud will not stand on that.

Q. Have you ever seen any mud or has anyone else ever seen any mud on that street?

A. No, sir; not on the chert.

JOSEPH R. CURTIS, a witness produced on behalf of the Government, and being first duly sworn according to law by the commissioner, testified as follows:

By Mr. SANFORD:

Q. Where do you live?

A. I live here.

Q. Were you living here on March of last year?

A. Yes, sir.

Q. Where are you at present employed, temporarily?

A. Since the first of March I have been at Jamestown,
357 at Norfolk.

Q. What is your occupation, your profession?

A. I am a newspaper man.

Q. In the spring of last year were you engaged in that profession?

A. Yes, sir. I was reporting on the Chattanooga Times.

Q. What paper were you connected with?

A. I was reporting on the Chattanooga Times.

Q. Did you go to the jail the night of the Ed Johnson lynching?

A. Yes, sir.

Q. How did you happen to go? Tell us about your going and give a statement as to what occurred. About what time was it?

A. I suppose about five or ten minutes after eight, I heard there was a mob up there at the jail, and I went up there. I got there, I suppose—I don't know what time it was—about five or ten minutes after eight. When I went in I didn't see anybody at all. I went in the outside office, and I stayed there a minute or two, and went in the inside to telephone; and two or three men came in in the meantime that I didn't know. One asked me where I was going, and I told him I was going to telephone, and he said I had better not, or could not, I don't know which. He had a Winchester rifle in his hand, so I didn't go in.

By Mr. PRITCHARD:

Q. He had what?

358 A. He had a rifle in his hand. I stayed there about five minutes, and came on out of the jail and went back to the office. Everything was quiet at that time. Except these two or three people I didn't see anybody. I came back to the office, and the city editor told me I had better go back up there and stay until something developed. At the time I got back there were eight or ten men there, and the outer door of the jail had been broken.

By Mr. SANFORD:

Q. When you first went to the jail how far in did you get?

A. I just went in the outside office.

Q. The outside office?

A. Yes.

Q. How many men did you see there? How many were there around there?

A. There were not but two or three.

Q. Two or three?

A. Yes, sir.

Q. Did you know any of those men?

A. No, sir.

Q. Where they masked?

A. I don't think they were.

Q. How many deputies did you see there?

A. I didn't see any.

Q. Then you went back to the Times office, and then came back?

A. Yes, sir.

Q. About how long was it between those times?

359 A. About ten or fifteen minutes.

Q. Then when you came back you found the door had been broken, you say?

A. Yes; the door had either been broken or unlocked. I never examined the door particularly, but it was open.

Q. What door was that?

A. That was the outside door to the jail proper. That is, the iron door leading from the office of the jail to the interior of the jail.

Q. That is the door that separated the prison part from the office part?

A. Yes, sir.

Q. That door was open, but whether it had been broken or not you do not know?

A. No, sir.

Q. But it was open?

A. Yes.

Q. Did you find anybody else inside there at that time?

A. When I went back there were eight or ten men; probably a dozen men inside. Mr. Gibson, the night jailer, was sitting on a table with two men when I got back, on the outside of the jail. He was in the office of the jail, but on the outside of the jail proper.

Q. He was sitting on a table?

A. Yes, sir.

Q. Was there anybody in the street at that time?

A. There were a few people. There was no one in the street at that time that knew there was a mob at the jail.

360 Q. How many men were there in the outer office there beside Mr. Gibson and these other two parties?

A. No one else at all.

Q. You went on in then?

A. Yes, sir.

Q. Or did you stay and talk to them?

A. I stopped there for a few minutes—for a minute or two—and I went on in afterward.

Q. What did you find inside? Where did you go?

A. Well, at that time they had not begun doing anything much then. They had a sledgehammer and an axe, and they were going up to the cage on the second floor. They struck the lock a blow or two, and the iron had been damaged so by the blows that the keys wouldn't go in it. They had a bunch of keys; but the lock was already broken or damaged.

Q. And the keys would not work?

A. No, sir.

Q. Do you know just where they got those keys?

A. No, sir.

Q. They had gotten them before you got there the second time?

A. Yes, sir.

Q. How many men were there in there?

A. Not over ten or twelve.

Q. Did they have on any masks or anything?

A. Some of them did. Some of them had handkerchiefs over their faces.

Q. How were those handkerchiefs tied?

361 A. They were just tied with a knot right behind their head, I think.

Q. What were they trying to do in there?

A. They were trying to break down that door.

Q. How were they going to work at it?

A. They had an axe they were using as a kind of a cold chisel, and they cut off the bolts later. They tried to batter it down first with a sledgehammer, and didn't make any progress; and then they tried to cut the bolts off.

Q. How long did it take them? Did they finally succeed in getting in?

A. Yes, sir.

Q. How long did it take them?

A. I suppose about an hour.

Q. About an hour?

A. Yes, sir.

Q. After they got the lock broken or cut, in this cold-chisel fashion, was there any other obstruction that you recall?

A. There is a circular door there that they had to get through.

Q. How did they get through that?

A. I don't remember whether they had to break any other locks or not, but I know it took some time to get through after getting the bolts cut off. I don't know what the process was.

362 Q. Do you remember whether there was a chain on the circular door or not? Do you remember seeing a chain?

A. I don't remember whether there was or not.

Q. How long did the whole process take, after you came back the second time, before they finally got through?

A. I should say about an hour and a half.

Q. Did any more deputies come around? Did you see any more deputies there?

A. I didn't see any more; no, sir; that I know of.

Q. Did Captain Shipp appear on the scene?

A. Yes, sir; he came in about nine o'clock; maybe a little after that.

Q. What did you see him doing?

A. I did not see him until he was brought up on the second floor. Several of the members of the mob had him by that time, and they brought him up to the second floor. I saw him going up the steps.

Q. What was he doing?

A. He was talking with them, and trying to reason with them, to get them to stop.

Q. Did the captain make any show of force at all?

A. Well, he didn't have any chance to.

Q. That was not my question.

A. Well, he did, yes; but he was overpowered.

Q. What show did he make?

A. Well, he—he didn't fight them, because there were so many of them.

Q. I did not ask you that, Mr. Curtis. I asked you what show of force he made.

A. Well, he talked to them, and tried——

363 Q. When you say he made a show of force, then, you mean talking, do you?

A. No, sir; he resisted their efforts to hold him.

Q. In what way?

A. By trying to pull away from them.

Q. What else did he do?

A. He didn't do anything else that I know of.

Q. Did he summon any posse in there?

A. Not that I know of.

Q. Did he call on you for assistance?

A. No, sir.

Q. Were there many newspaper men in there?

A. There were about four, I think.

Q. Who do you remember seeing in there? Just tell us who you say that you remember.

A. Well, I don't remember seeing anyone except the newspaper men. I saw Dr. Sutton there, and I don't believe I knew anybody else that was there at all.

Q. And the newspaper men?

A. Yes; and the newspaper men.

Q. Did the mob, or the lynchers, search Captain Shipp?

A. I think they did.

Q. What did they take from him?

A. I think they took his keys.
Q. Did they take a pistol?
A. Not that I know of.
Q. How long did the captain stay around there before they finally got Johnson?
364 A. He came there a little after nine. It was about ten then they got Johnson out.
Q. Were there other people in there that were bystanders, looking on, besides the newspaper men?
A. A great many; yes.
Q. How many would you say were in there?
A. Well, the jail was full. I should say fifteen or twenty; maybe more than that.
Q. How many were there in the lynchers' or lynching party?
A. Not over twelve or fifteen.
Q. You say they were masked?
A. Some of them were; yes.
Q. Did they keep their masks on all the way through?
A. No, I don't think they did. Along just before they got him out most of the masks dropped off.
Q. And there were how many men, say, of the by-standers, the men who were not participating in the lynching?
A. I should say fifteen or twenty anyway.
Q. Did they stay there until the end, or most of them?
A. Most of them; yes, sir.
Q. Did Captain Shipp call on any of those men as a posse to help him protect that prisoner?
A. I wasn't with Captain Shipp all the time; not that I know of.
Q. What time did they leave with Johnson?
A. About ten o'clock, or perhaps a little after.
Q. What became of Captain Shipp?
365 A. I don't know.
Q. Do you remember seeing him when you left?
A. No; I went out just in front of the negro. The last few minutes that I was in the jail I was not with him, and I don't know what became of him.
Q. You do not remember seeing him when you left?
A. No. The last five minutes before they got Johnson out I was not right where he was, and I don't know where he went, and I don't know what he did.
Q. You did not see him locked up at all, did you?
A. No, sir.
Q. Did any of those men—the lynchers—seem to recognize or know Ed Johnson personally, or did he know any of them?
A. Two or three of them spoke to him, and he spoke to them, and called them by their first names.
Q. Do you remember any of those names?
A. No. I do not remember their names at all.
Q. But he did address two or three of them by their first names?

A. Yes, sir.
Q. And they knew him and he knew them?
A. Yes, sir.
Q. Do you know the names of any of those lynchers?
A. No, sir.
Q. Was there any one man who seemed to be the leader?
A. Well, there was one man, yes, that seemed to kind of direct things.

366 Q. What sort of a looking man was he?

A. He was a rather low, heavy-set, swarthy, dark-complected man.
Q. A man that you knew?
A. No, sir; I had never seen him before.
Q. How much would he weigh?
A. 175 to 200, I should think.
Q. What was his muscular condition?
A. He was very strong; he seemed to be.
Q. What was he doing? What part did he take, besides directing things?
A. He used the hammer most of the time, in cutting off these bolts.
Q. Did he show awkwardness or proficiency with the hammer?
A. He was rather proficient.
Q. What was the general appearance of the lynchers, in reference to their age? Were they young men or old men?
A. They were middle-aged men, most of them, from twenty-five to thirty-five years old.
Q. That is what you mean by "middle-aged" is it—from twenty-five to thirty-five?
A. Yes; they were about that age.
Q. What was their appearance—I mean in this respect: Did they seem to be laboring men, or clerks, or what could you tell from their appearance as to their occupation?
A. I should say they were workingmen, mechanics, or men of that class.

367 Q. Men from twenty-five to thirty-five generally?

A. Yes, sir.
Q. And apparently mechanics?
A. Yes, sir.
Q. You say you did not know any of them?
A. No, sir.
Q. Mr. Curtis, tell us about whether or not there had been any general idea or feeling in the community that there was danger of anything of this sort taking place, that you know of?
A. Well, there had been for some little time. There had been rumors to that effect.
Q. Had it been announced that the Supreme Court had granted a stay in the proceedings?
A. At the time of the lynching?
Q. Yes.

A. Yes, sir.

Q. What effect did that have on the public apprehension of trouble, of a lynching?

A. It caused a good deal of comment, and the general impression seemed to be that there might be a lynching if Johnson was not executed.

Q. Was that the common impression?

A. It seemed to be; yes.

Q. Had there been before that, for some time, a quiet atmosphere in the community, or one of tension and excitement?

A. Well, for two weeks it had been one of excitement—for about two weeks I should say.

368 Cross-examination by Mr. PRITCHARD:

Q. Mr. Curtis, the fact is that from the time of the commission of this crime, some time in January, about the 23rd of January, and up to the time of the trial of Johnson, there had been quite a considerable degree of public excitement; but as a matter of fact that public excitement had, since Johnson was brought back, for some time, say ten days, or such a matter, subsided, had it not?

A. Well, it had up to the time of that first riot at the jail about two weeks previous to that, when a mob attacked the jail; but I think after that there was a good deal of excitement.

Q. After that mob?

A. Yes, sir; after the first mob.

Q. Do you know when that first mob occurred; do you remember?

A. I do not remember the date, but I think it was about two weeks before he was lynched.

Q. Well, did not the trial intervene, and was it not some thirty or forty days between?

A. I don't remember.

Q. Then, if instead of it being about a week or so, it was thirty or forty days, the excitement did not continue to the time you suppose it did.

A. There was a good deal of excitement during that time. I don't know whether it was two weeks or not.

Q. The excitement was at its greatest height about the time of that mob, was it not—the first mob, I mean?

369 A. Well, there was a good deal of excitement then; yes.

Q. Was it not at its greatest height? Was there not a very considerable degree of excitement at that time?

A. There was; yes.

Q. Then a period of something like, we will assume, a period of about fifty days elapsed between that time and the time Johnson was lynched. What is your idea of the state of the public pulse during that period?

A. Well, there was a great deal of excitement during that entire time, is my impression, and especially when it was known that the United States court had taken some action in the matter.

Q. Did the excitement have anything to do with the United States court any more than with the state court, or was it simply the question of delay?

A. No; but the United States court had something to do with the excitement.

Q. I am not asking you about whether it did or not. You will be in contempt of court if you say that; but I am asking you whether it was not the delay, regardless of whether it was the United States court or the state court?

A. I did not understand the question.

Q. Was it not the delay and not the court that caused the excitement?

A. Yes; it was the delay in the execution of Johnson that caused the excitement.

Q. It was not a question of whether it was the United States court or the state court?

370 A. No, sir; it was not.

Q. Nobody reflected on the court?

A. No, sir.

Q. It was the delay was it not? That is what you mean?

A. I mean it was the delay; yes, sir.

Q. I am not asking whether the court caused the delay or not. Now, as a matter of fact, the lynching of Johnson came to the public, when he was lynched, as a very great surprise, did it not, at that time?

A. I don't think so.

Q. You do not think so?

A. No, sir.

Q. Had you heard any talk about any lynching?

A. Yes, sir.

Q. You had heard talk?

A. Yes, sir.

Q. Why did you not tell about it in the paper? You were connected with a paper. Why did *not* not let people know it if you heard that sort of thing? Why did you not tell about it in the paper?

A. That was not my business.

Q. It was not your business?

A. No, sir.

Q. You are connected with a public journal, you say?

A. Yes, sir.

Q. And it was not your business to notify the public that a crime was imminent?

(No answer.)

371 Cross-examination by Mr. CLIFT:

Q. You say that night jailer Gibson was sitting on the table with two men. Was he a prisoner at that time? Were they guarding him?

A. I don't know whether they were or not.

Q. Did they have guns?

A. Not that I know of.
Q. What was he doing when you first saw him?
A. My impression was that he and another man were sitting on a table, and still another man was in a chair by the side of the table.
Q. Do you know whether the people who were there at the time you first went there were in sympathy with the mob or not?
A. I judged they were.
Q. Why did you judge that, Mr. Curtis?
A. Well, I started into the inner office to telephone and they stopped me.
Q. You judged that, then, from their acts and conduct?
A. Yes, sir.
Q. That they were in sympathy with them?
A. Yes, sir.

372 By Mr. SHEPHERD (for the defendant "Bart" Justice):

Q. You saw the leader, who had the hammer breaking open the door of the jail, did you, Mr. Curtis?
A. Yes, sir.
Q. And you described him as a low man?
A. Well, medium height.
Q. What height would you say?
A. I should say 5 feet and 8 or 9 inches.
Q. A man 6 feet 1 inch is quite a tall man, is he not?
A. Yes, sir.
Q. And the man was not that high?
A. No, sir.
Mr. SHEPHERD. Mr. Justice, will you please stand up?
(The defendant Justice stood up, as requested.)

By Mr. SHEPHERD:

Q. Take a look at that gentleman and state whether that is the sort of man you saw.
A. I don't think the man was that high.
Q. Are you acquainted with the interior arrangement of the jail of Hamilton County, Mr. Curtis?
A. Yes, sir.
Q. How many stories are there in the prison part of the jail?
A. I think there are three.
Q. And in each one of these stories there are a number of cells, are there not?
A. Yes, sir.

373 Q. Individual cells, where the prisoners were locked up?
A. Yes, sir.
Q. Do you know what sort of doors these cells have to them?
A. They have revolving doors.
Q. That is, when you come in to the main floor; but I am asking you about the cell doors.
A. No; I don't know what kind of doors they are.

Q. Do you not know they are made of sheet iron, these cells?
A. I don't know.
Q. And that each prisoner is locked up in his own cell?
A. I don't know.
Q. The stories are immediately over each other, are they?
A. I think so.
Q. And the stairway runs up and reaches each one of the stories from the front part of it?
A. Yes, sir.
Q. I will ask you to state whether or not it would be possible for a man confined in the lower story, the bottom story, to see and recognize a man breaking open the door of that jail upon the third story, where Johnson was?
A. I should say that it was.
Q. Was possible?
A. Was impossible.

374 Q. Suppose the man was a prisoner and locked up in his individual cell; would it be possible at all for him to look up and see what was going on on the outside, in the story above him?

A. I think not.

Mr. DANIELS. Mr. Commissioner, I do not know whether my name has been given as counsel for William Marquette. If not, I would like to have it noted.

The COMMISSIONER. The stenographer will note it.

By Mr. DANIELS:

Q. Do you know William Marquette?
A. Yes, sir.
Q. How long have you known him?
A. Two or three years.
Q. Was he present at the jail on the night you speak of?
A. I don't remember of having seen him.

Redirect examination by Mr. SANFORD:

Q. When you came out of the jail with Johnson that night, how many people were there around the jail, would you say?
A. Well, there was quite a number. I don't know.
Q. Give us your best estimate.
A. I should say 15 or 20 probably; but some of them had come out from the jail.
Q. Have you ever been in the habit of going around that jail in the evening, before the time of this lynching?
A. Yes; I have been up there a good deal.

375 Q. I wish you would state how you generally found the jail with reference to there being deputies there in the evening.

A. There was generally two or three around there almost every evening till 8 or 9 o'clock.
Q. And on this particular evening, as far as you recollect, you saw nobody there except the night jailer?

A. That is all.
Q. Were you there at the jail the time of the first mob?
A. Not until it was almost over.
Q. The mob was repelled that first time, was it not?
A. Yes, sir.
Q. Do you know how many men it took to repel it?
A. No, sir.

Recross examination by Mr. SHEPHERD:

Q. Please state whether this man you speak of as the leader of the mob wore a beard or moustache, or whether he was a clean-shaven man.
A. My recollection is that he was clean shaven, but hadn't had a shave in a day or two.
Q. He had no moustache or whiskers?
A. I think not.

376 T. S. WILCOX, sr., a witness produced on behalf of the United States, being duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Mr. Wilcox, you live in Chattanooga?
A. Yes, sir.
Q. What is your business?
A. Plumber.
Q. What official position did you occupy in the city in the spring of 1906?
A. Chairman of the board of safety.
Q. Did that board of safety have control of the police?
A. Entirely.
Q. And the right to call out the police?
A. Yes, sir.
Q. Do you remember the time of the Johnson lynching?
A. Yes, sir.
Q. March 19th?
A. Yes, sir.
Q. Had there been a previous effort to lynch Johnson and another prisoner or any of the prisoners at the jail there?
A. Yes; there had been an effort made.
Q. How long before?
A. I would not be positive. I never kept track of the time; but it was some time before that.
Q. Some weeks or months?
377 A. Yes.
Q. Some weeks, at least.
A. It might have been some weeks; yes, sir.
Q. Was Ed Johnson in the jail at the time of that first attempt?
A. He was supposed not to be. To my knowledge he was not.
Q. Had you been communicated with on that former occasion to aid in suppressing that mob?

A. Yes, sir.
Q. Who had communicated with you?
A. Well, I had two or three calls from the jail, but I wouldn't be positive who they were.
Q. Were they from the sheriff or any of his deputies?
A. Some of his deputies; yes, sir.
Q. Did you go down there?
A. Yes, sir.
Q. Was that mob suppressed?
A. Well, yes; they was quieted—pushed away from the jail.
Q. Did you go down there with any police or send them down?
A. I sent some down; yes, sir. There was some there when I got there and I sent a few as I went along.
Q. How many did it take to quiet that first mob; do you remember?
A. Well, we had about 16; it might have been 20, but fully 16 men went out to quiet them and push them out of the yard.
378 Q. Now, on the occasion of the lynching of Ed Johnson did you get any request from the sheriff or any of his deputies to come out again and suppress the mob?
A. No, sir.
Q. Have you a telephone in your house?
A. Yes, sir.
Q. Do you know whether the sheriff has a telephone in his residence?
A. No, sir; I don't know.
Q. You do not know how that is?
A. I am not positive about it.
Mr. SANFORD. Is that disputed? Is it necessary to bring a witness to prove that the sheriff had a telephone?
Mr. PRITCHARD. He had a telephone.
Mr. SANFORD. It is agreed that the sheriff did have a telephone.

By Mr. SANFORD:

Q. It was the same telephone system, was it not?
A. One system; yes.
Q. There is one system in the town?
A. Yes, sir.
Q. Connecting your house and the jail and the chief of police's office, I suppose?
A. Yes, sir.
Q. And a large number of other telephones in the city?
A. Yes, sir.
379 Q. You say that neither the sheriff nor his deputies telephoned you that night and asked you to have the police called out?
A. No, sir.
Q. When you went down to stop the first mob you say you summoned men as you went along?

A. Yes. That is, I would tell different ones that if they seen any officers to send them up as quick as they could get them there.

Q. And you got about 16 altogether?

A. Yes; about 16, as near as I could guess at it.

Q. How long were you going down from your house to the jail on the first occasion, if you remember?

A. I suppose about four or five minutes.

Q. How far do you live from the jail?

A. About four or five blocks.

Q. How far do you live from the sheriff?

A. Well, I don't know where the sheriff was living at that time. I couldn't answer that. I don't know what part of the city he was living at.

Q. How far from your house was the office of the chief of police?

A. A block.

Q. You were both within four or five blocks of the jail?

A. Yes, sir.

Cross-examination by Mr. PRITCHARD:

380 Q. The chief of police, Mr. Wilcox, is the man that has direct charge of the management and handling of the police in case of emergency? You are on the board of public safety?

A. Yes, sir.

Q. And in emergencies the chief of police would be the man to communicate with?

A. Well, I suppose we would be the ones to talk to.

Q. But the man in charge of the police force is the chief of police?

A. Yes, sir; we employ him to take charge of the police.

Q. He has charge just like a colonel of a regiment would have charge, under the general supervision of the War Department. Your board of safety has general charge of the appointment of policemen and general charge of that department, but the man directly in charge is the chief of police?

A. Yes; he is over the police department.

Mr. PRITCHARD. I expect to put in evidence the charter, and things of that sort.

By Mr. PRITCHARD:

Q. Do you know whether or not the mayor was out of town on the occasion when you were called upon, at the time the attempt was made to lynch Johnson?

A. The first time or the time he was lynched; which time are you speaking of now?

Q. The time the attempt was made to lynch Johnson.

A. The mayor was in the city at that time.

381 Q. Do you know whether he was communicated with or not?

A. He was not.

Q. He was not communicated with?

A. No, sir.

Q. On that occasion?

A. No, sir.

Q. Do you know whether the mayor was in the city or not at the time that Johnson was lynched?

A. He was not in the city.

Q. You say that the mob that attempted to lynch Johnson was dispersed or quieted?

A. Yes, sir.

Q. Now, as a matter of fact, they were dispersed not by force of arms, or any attempt at force of arms, but were dispersed by reason of being convinced that Johnson was not at the jail; is not that so?

A. No, sir.

Q. Were they not convinced that Johnson was not in the jail?

A. They didn't attempt to leave there until the police drove them out of the yard.

Q. Did they send a committee into the jail to see whether or not Johnson was in the jail?

A. Yes, sir; they sent a committee in there.

Q. The mob sent it in and it ascertained that Johnson was not there?

A. The committee did; yes, sir.

Q. And did it not so report?

382 A. Well, they tried to make a report; yes, sir.

Q. Johnson was not there, as a matter of fact, was he?

A. Not to my knowledge.

Q. And if they had searched the jail from foundation to turret stone they could not have lynched Johnson, could they?

A. Not that I know of.

Q. Do you know whether he was there?

A. No, sir; I do not. I never seen him.

Q. But your understanding was that he was not there?

A. Yes, sir.

Q. And the committee that the mob sent in to ascertain whether he was there did report that he was not there?

A. Yes, sir.

Q. You say they did not leave the jail yard until the police told them to go out?

A. No, sir; they did not.

Q. That occurred some 50 days before the lynching?

A. I wouldn't be positive about how many days or how many weeks. I didn't make no note of it.

Q. We will assume it did occur 50 days or more—53 days we will call it. I ask you whether or not after that the state of public feeling had not become calmed down and quited?

A. It had.

Q. At the time Johnson was actually out, Mr. Wilcox, and for some time prior to that, I will ask you if the state of public excitement had not subsided?

383 A. Yes, sir; that is, to the best of my knowledge. It looked that way to me.

Q. I will ask you if there was any public or general apprehension or any belief that Johnson would be lynched, and whether or not the lynching of Johnson did not come as a very great surprise to the public?

A. It did to me.

Q. Had you suspected anything of the sort?

A. No, sir.

Q. You were here in public affairs?

A. Yes, sir.

Q. And have been for years?

A. Yes, sir.

Q. You are familiar with the city?

A. Yes, sir.

Q. And have a wide acquaintance in the city?

A. Yes, sir.

Q. And you are chairman of the board of public safety?

A. Yes, sir.

Q. And this lynching came as a very great surprise to you?

A. Yes, sir.

Q. You were not looking for it nor expecting it?

A. No.

Q. It has been admitted that Captain Shipp did have a telephone. Do you know the fact that the jail telephone had been, early in the night, torn out by the mob?

A. No, sir; I did not know that.

Q. You do not know whether Captain Shipp was at the

384 jail, either?

A. No, sir.

Redirect examination by Mr. SANFORD:

Q. Mr. Wilcox, was that first mob after Johnson alone, or after Johnson and Westfield?

A. It seemed to be after Johnson, from what I could understand; to have come there for the purpose of getting Johnson. Westfield might have come into it afterwards, but it was not talked of at all there that I heard, until afterwards.

Q. Until afterwards?

A. Yes, sir.

Q. Was the mob dispersed that first time by the policemen or by the committee report that you speak of?

A. The mob was put out of the jail yard by the police department.

Q. Were the police armed?

A. They was armed, but they didn't use their arms; they simply used their billies.

Q. They just used their billies?

A. Yes. One or two might have had their pistols out at the side, just holding them at their side: but there was no pistol presented that I know of.

Q. How big a mob was that, that first time?

A. Well, I would say it was about a thousand people.

Q. And 16 policemen with billies drove them out?

385 A. No; they were not all in the yard.

Q. How many were in the yard?

A. Oh, I suppose there was seventy-five or a hundred people in the yard.

Q. Those were the men that the policemen drove out?

A. Yes, sir.

Mr. Sanford. Mr. Commissioner, I would like to ask an adjournment until to-morrow morning. We have some more witnesses, but I do not think we have enough to do any material work this afternoon, and I think we all can save time by adjourning until to-morrow morning.

Mr. Pritchard. All right.

Mr. Sanford. I think I ought to state, Mr. Commissioner, that I do not think we are going to take more than a day or two longer, probably two days; and the defendants wish to consider the question of issuing subpœnas for their witnesses, so that we may not be delayed.

The Commissioner. The commission is adjourned until to-morrow morning at 10 o'clock.

Thereupon, at 11.50 a. m., the hearing was adjourned until Tuesday, June 11th, at 10 o'clock a. m.

386 Chattanooga, Tennessee, *June 11, 1907.*

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland, and counsel for the various defendants.

William Walker, a witness produced on behalf of the Government, and after being first duly sworn by the commissioner, according to law, testified as follows:

By Mr. Sanford:

Q. What is your full name?

A. W. M. Walker.

Q. Where do you live?

A. I live at No. 8 Bailey avenue, Highland Park.

Q. That is a suburb of Chattanooga?

A. Yes, sir.

Q. What is your business?

A. I am a contracting carpenter.

Q. A carpenter and contractor?

A. Yes, sir.

Q. Do you know Sheriff Shipp, a defendant in this case?

A. Yes, sir; I know him when I see him. I am not personally acquainted with Sheriff Shipp.

Q. Did you have any conversation with Sheriff Shipp after
387 the first attempt to lynch Ed. Johnson, in the spring of last year, and before he was finally lynched?

A. He came up there one time at Myrick's store, when I was building a house over there. Me and him met, in a kind of a little joshing way, or queering way. I told him I thought him running the negro out through Harriman to Nashville would cost him his election.

Q. When did this conversation occur?

A. I don't remember the date. I didn't pay any attention to it.

Q. Do you remember when the first mob attempted to lynch Johnson? You remember the occurrence?

A. Yes; I remember it. I don't remember any dates about it.

Q. Was it after that or before that? Was it after the first attempt to lynch him?

A. It was after the first attempt; yes.

Q. Was it before the time he was finally lynched?

A. Yes, sir; it was before he was finally lynched.

Q. So it was after the first attempt to lynch him, and before he was finally lynched?

A. Yes.

Q. In between those dates?

A. Yes, sir.

Q. You saw Sheriff Shipp and you spoke to him. What was your language?

A. He just handed me his card. I was kind of playing with him. I didn't care anything about it. He handed me his card, and
388 I told him running that negro away out through Harriman to Nashville, or somewhere there, would cost him his election. I didn't think anything about it. I never thought anything about it. I told him that it would cost him his election, or something that way. He handed me his card and said something about he had to take care of the negro; that that was his duty; and the only regret he had, or something that way, was that the mob didn't get him before they did, because he had to take care of him after he had him in his hands, or something like that.

Q. Was he electioneering at that time?

A. I think so.

Q. He was a candidate for reelection?

A. Yes.

Q. That was how he happened to hand you his card?

A. Yes, sir.

Q. He was electioneering?

A. Yes, sir.

Q. And that was the reply he made to you?

A. Yes, sir; that is my recollection. That is about all I know.

Q. You told him you thought his action in getting the negro away——

Mr. PRITCHARD. I object to the leading mode of examination.

Mr. SANFORD. I don't mean to lead him. Take the witness.

389 Cross-examination by Mr. PRITCHARD:

Q. What did you say your name was?

A. W. M. Walker.

Q. What do you do for a living?

A. I am a contracting carpenter?

Q. What else do you do?

A. I work. That is about all I know.

Q. When have you had any contract?

A. I have got some now.

Q. Do you follow that as a business or do you follow trading as a business?

A. I don't trade at all; no, sir. I am a contractor. That is what I am doing.

Q. You are a contractor?

A. Yes, sir.

Q. How long have you been at it?

A. About two years, I guess.

Q. What did you do before you commenced contracting?

A. I worked at the carpenter's trade.

Q. How old are you?

A. Forty-three years old; I will be my next birthday.

Q. You say you and Mr. Shipp had a conversation?

A. Yes, sir; just a casual conversation.

Q. Had you ever had a conversation with him before?

A. I rode with him in a buggy up through Avondale, previous to his first election.

Q. You say you know him when you see him?

390 A. Yes, sir.

Q. That is the extent of your acquaintance?

A. Yes.

Q. You just said you know him when you see him?

A. Yes.

Q. You never had any sort of conversation or communication with him on any subject whatever?

A. No, sir.

Q. He was electioneering for sheriff?

(The witness nodded.)

The COMMISSIONER. Please answer "yes," instead of nodding.

The WITNESS. All right. Yes, sir.

The COMMISSIONER. The stenographer wants to hear what you say; to put it down.

The WITNESS. All right.

By Mr. PRITCHARD:

Q. You were at work on a house?

A. Yes.

Q. Where?

A. For Mr. Myrick.
Q. Where was it?
A. Right above his store. His store is 1400 McCallie avenue—right above his store. I guess it is 1412.
Q. At what town?
A. In the suburbs out there.
Q. How far out of town and in what suburb?
A. Highland Park.
391 Q. He came out there electioneering?
A. Yes, sir; oh, yes. He came out there electioneering, of course.
Q. And you said to him, what? Tell us what you said. Do not say "joshing." What did you say?
A. He just came up and shook hands with us boys.
Q. I did not ask you what he did. What did you say to him?
A. I don't know that I said anything to him at all, until he spoke to me.
Q. What did you say to him when you did say anything to him?
A. When he got to talking, I told him I thought him running that negro out through Harriman to Nashville would cost him his election, or something like that. I don't remember the exact words.
Q. Had the negro at the time of this conversation been lynched?
A. No, sir.
Q. He had not been lynched?
A. No, sir.
Q. What reply did you say he made?
A. He said that after the negro fell in his hands he had to take care of him.
Q. And he said he had taken care of him, did he not?
A. No, sir; he didn't say anything at all. He said he had to care *care* of him; and the only regret he had was that the mob didn't get him before he got him.
392 Q. The mob had not got him at the time of this conversation at all, had it?
A. No, sir; but there had been an attempt, you know.
Q. But that attempt had not been successful?
A. No, sir.
Q. And he expressed regret that the mob had not got him?
A. Well, I don't know how much he regretted it. He said something to that amount.
Q. Tell what he said. Do not say he said something to that amount. Tell us all he said.
A. He said the only regret he had was that the mob didn't get him before he did, because he had to protect him.
Q. But the mob had not got him at the time of this conversation?
A. No*w*; but they made an attempt.
Q. And he was expressing regret that the mob had not got him before, although the conversation occurred before the mob had got him.

A. Yes; but not before they had tried to get him.
Q. He said he had to take care of the negro?
A. Yes.
Q. What was it he said about the mob?
A. I think about the words was——
Q. Do not think about it. If you know that he said anything, tell us; if you do not know, say so.
A. He said the only regret he had was that the mob didn't get him before he did.
Q. Is that what he said, or what you think?
393 A. That is what he said.
Q. There is no "think" about it?
A. No, sir.
Q. Why did you say, in answer to all the previous questions, that he said something to that amount, or that you thought he said so, or that he was joshing you, or "queering" you, or the various expressions you used, instead of stating what you now state?
A. I don't know what you thought. There was no joshing to it.
Q. You did not use that word?
A. I don't remember using it.
Q. Do you swear you did not use that word?
A. I don't think I used the word "joshing" at all.
Q. You do not think you did? You did not say you were joshing him?
A. If I did I have forgotten it.
Q. Your memory is extremely short, isn't it? You can not recollect what you swore to when you first came on the stand, ten minutes ago, can you?
A. I think I can.
Q. Were you joshing him?
A. No.
Q. Then, if you swore that you were joshing him you swore to what was not true, did you?
A. I don't remember the word "joshing."
Q. You did not use the word?
394 A. I don't know. If I did, I have forgotten it.
Q. What did you mean by it, if you did use it?
A. I meant having a little fun. I never thought anything serious would happen about it.
Q. Why were you objecting so seriously because the negor had not been lynched, and suggesting to the sheriff that it might cost him his election? Did you want to lynch him?
A. If I have to answer that I will answer it.
Q. Did you want to lynch him?
A. Do I have to answer?
Q. Certainly.
A. Do I have to answer that?
Q. Certainly. I insist upon your answering it.
A. Do I have to answer it?

The COMMISSIONER. If you refuse to answer I will have to report you to the court.

Mr. PRITCHARD. I want to see what he would do. He may have wanted to commit several crimes if he had an opportunity to do it.

The WITNESS. I don't want to give any untruth. I am trying to be honest in this matter.

Mr. PRITCHARD. It is very palpable that you are.

The WITNESS. If you insist on my answering the question I will answer it.

By Mr. PRITCHARD:

Q. Answer it.

A. Yes, sir; I think it ought to be lynched.

Q. Did you want to lynch him?

395 A. Yes, sir; if I had known of it I would have wanted to.

Q. You were making an argument against Mr. Shipp's election because he had not allowed the negro to be lynched?

A. No, sir; I have never made any argument against Sheriff Shipp.

Q. And although you say the negro had not been lynched, and the attempt that was made to lynch him had failed, he was expressing regret that he had not been lynched before?

A. No; he said he had to take care of him, and his only regret was that the other fellows didn't get him before he did, because he had to take care of him. That is what I am telling you all the time.

Q. When did you first communicate this supposititious conversation to anybody, that you are proposing to testify about here?

A. What kind of a word is that?

Q. This conversation you are telling about. When did you communicate it to anybody?

A. I don't know. I don't know even how it got out, how it ever happened. Old man Reade, to my recollection, was standing there. I don't know how it got out.

Q. Who did you tell about it?

A. I don't know.

Q. Who did you tell about it first?

A. I don't know that I ever told anybody.

Q. You never told anybody; they just simply exercised some sort of hocus-pocus business to find out that you knew about a conversation you never had told about?

396 A. I don't know; I can't tell. If I ever told anybody I can't remember who it was.

Q. When did you first tell it, if you told it?

A. Whether I told it or no, I don't know.

Q. You never told anybody until you came on this witness stand?

A. Yes; just a while ago I did. I talked to Mr. Sanford there. Yes; I did tell him of it.

Q. To-day?

A. Yes; to-day.

Q. Is that the first time you told anybody?

A. I think it is. That is my recollection.

Q. How did they find out about your intimate relations with Sheriff Shipp, and suspect that he would be communicating secrets to you?

A. I don't know that it was any secret. He didn't seem to make it any secret.

Q. Who else was there when the conversation took place?

A. Mr. Reade, is my recollection.

Q. Who is he?

A. He is a carpenter over there.

Q. Do you know his given name?

A. No, sir.

Q. Where does he live?

A. On Duncan avenue, right close to the store we were working at.

Q. At Highland Park?

A. Yes, sir.

397 Q. He lives near the store you were at work on at the time?

A. Near the store of the man I was building the house for.

Q. Is he a carpenter, do you say?

A. Yes.

Q. How old a man is he?

A. I don't know. I expect he is 62 or 63 years old.

Q. Does he wear whiskers?

A. Yes; he wears short whiskers.

Q. What is the color of his hair?

A. Iron gray.

Q. How large a man is he?

A. He is a man of small stature—probably 140 pounds.

Q. Weighing about 140 pounds?

A. I think so.

Q. How many times had you been drunk before you told this, after it occurred?

A. I don't know.

Q. About how many times?

A. I don't know about how many times.

Q. Every day?

A. I have been drunk several times.

Q. About how many times had you been drunk in the interval?

A. I don't know. I have been drunk several times.

Q. Were you drunk when the conversation took place?

A. No, sir.

398 Q. Were you drunk the next day?

A. I don't know about that.

Q. You have been drunk almost constantly since, have you not?

A. No; I don't know about "constantly."

Q. How often have you been sober if you can not tell how often you have been drunk?

A. Every time I have got drunk I have got sober.

Q. How long have you stayed sober between drunks? How long have you stayed sober?

A. Oh, I don't know. I would get ready to get drunk again, is all I know.

Q. You would get ready pretty quick, would you not?

A. I don't know. When I come to town, if I want to take a few drinks I take them.

Q. And you come to town very often?

A. Yes; very often.

Redirect examination by Mr. SANFORD:

Q. What was the understanding at the time you had this conversation with Captain Shipp, about what, if anything, Captain Shipp had done to protect Johnson at the time the mob tried to lynch him the first time?

A. I think he run him off, and took him to Knoxville, probably.

Q. He got him away?

A. Yes.

399 Q. What effect was that having on Captain Shipp's race for election? What general effect was that having?

A. Well, I don't know.

Q. You do not know?

A. No, sir.

Recross-examination by Mr. PRITCHARD:

Q. You said a while ago that he took him to Nashville; then that he took him to Harriman; and now you say he took him to Knoxville. Where had he taken him?

A. I think I said he took him by way of Harriman to Knoxville.

Q. Did you not say he took him to Nashville?

A. If I did I didn't know what I was talking about.

Q. If you did say that was the place he was taken to, you did not know what you were talking about?

A. I think he took him to Knoxville. All I know about it I got out of the newspapers. I have no interest in this matter whatever.

Redirect examination by Mr. SANFORD:

Q. It was stated in the newspapers that he had taken him somewhere, and where you do not know?

A. Yes; he took him away, I think, by way of Harriman, maybe to Knoxville. I don't know. I have no interest in this matter whatever.

400 H. B. W. HOWIE, a witness produced on behalf of the Government, and after being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PENLAND:

Q. What are your initials?

A. H. B. W.

Mr. PRITCHARD. If there are other witnesses in the room to be examined, I ask that they be*en* excluded.

The COMMISSIONER. All witnesses that have been summoned in the case, with the exception of the newspaper men and the secret service agent, must retire from the room. Any who have been summoned as witnesses must leave the room until their names are called.

Mr. PRITCHARD. That order was made yesterday.

Mr. PENLAND. Some witnesses were not here yesterday when the order was made.

By Mr. PENLAND:

Q. Where do you live?

A. 1009 East Eleventh street.

Q. Chattanooga?

A. Yes, sir.

Q. How long have you been living here?

A. Two years.

Q. Do you hold any official position in the city government?

A. I am assistant city engineer.

Q. What is that?

401 A. I hold the position of assistant city engineer.

Q. Did you hold that position in March, 1906?

A. Yes, sir.

Q. What is the name of the street leading from the county jail out to the county bridge across the river?

A. Walnut street.

Q. State whether or not the city were making improvements on that street about March, 1906.

A. No, sir.

Q. When did they make any improvements on it?

A. I do not know.

Q. Were there any streets that crossed that street that they were making improvements on at that time?

A. They made some improvements on Third street.

Q. Does Third street cross Walnut street?

A. Yes, sir.

Q. Were there any other other streets besides Third street, crossing Walnut street, on which they were making improvements about that time?

A. No, sir.

Q. Just the one?

A. Yes, sir.

Q. What was the character of the improvements?

A. They were putting down chert pavement.

Q. Do you know the condition of that chert about March, 1906, as to whether or not it was firm and had been impacted by that time, or whether or not it was loose?

402 A. I know nothing of the condition of the street at that time.

Q. What were your duties in reference to that particular work, Mr. Howie?

A. Setting the grade for the work and giving the final measurements.

Q. Do you know, as a matter of fact, that there was chert on the street at that time?

A. No, sir.

Q. What time was it put on, if you know?

A. I do not know.

Q. You do not know anything about its condition at all?

A. No, sir.

Q. How often did you visit the work?

A. I visited it three times; once in January, and once in February, to set the grade; and one in July, to make the final measurements.

Q. You set the grade then in February, you say?

A. Yes, sir.

Q. And the work was completed in July?

A. Yes, sir.

Q. What is the character of that chert, when it is loose, especially? State whether or not it will stick to the feet, as mud or dirt will.

A. When it is very loose and wet it will stick to your feet.

Cross-examination:

Mr. SHEPHERD. I do not desire to ask anything.

By Mr. PRITCHARD:

403 Q. Third street crosses Walnut street at right angles?

A. Yes, sir.

Q. And crosses on the asphalt. Walnut street is an asphalted street at the point of the crossing?

A. Yes, sir.

Q. The improvement you speak of on Third street extended only from Walnut street to High, on the east side of Walnut street?

A. It extended from the east street line of Walnut to the north curb line of Lookout.

Q. A distance of one block?

A. A distance of one block.

Q. From Walnut to Lookout, where this chert was being put, what is the grade?

A. I can not state the exact grade.

Q. I do not mean the degrees or anything. Is it practically level, or is it inclined one way or the other?

A. If my memory serves me aright there is a fall of about one foot to the hundred towards Lookout street from Walnut.

Q. From Walnut to Lookout?

A. Yes, sir.

Q. And that block on which this improvement was being made is how many blocks north of the jail, which is between Sixth and Seventh?

A. It is three blocks north.

Q. And a little over?

404 A. Yes; a little over.

Redirect examination by Mr. PENLAND:

Q. You say Third street is at right angles to Walnut street?

A. Yes, sir; within a degree or two.

Q. And about three blocks from the jail?

A. Yes, sir; three and a fraction.

Q. Did this improvement, where that chert was being placed, come up to Walnut street on each side?

A. It started at the east street line of Walnut street. The asphalt on Walnut street goes on the Third street crossing to the east street line of Walnut.

Q. I understand; but does this improvement that you were making come up to Walnut street on both sides?

A. No, sir; it comes up to Walnut street on the east side only.

Q. The east side only?

A. Yes, sir.

Q. And that is between the jail and the river?

A. Yes, sir.

Recross-examination by Mr. PRITCHARD:

Q. That is the curb line you speak of?

A. The curb line, I believe, on Walnut street is twelve feet
405 from the street line. The street line is the line that marks the street from the property owner.

Q. Did Noll & Thompson do that work?

A. Yes, sir.

By Mr. CHAMLEE:

Q. A man walking on Walnut street, going from the jail towards the bridge, would not come in contact, if he were on the sidewalk, with any improvement that was being made on Third street, would he?

A. No, sir; not if he was on Walnut street.

Q. If he were on Walnut street, or on the sidewalk on Walnut street, he missed the improvement entirely?

A. Yes, sir.

Q. Was any improvement made on Walnut street anywhere between the bridge and the jail?

A. No.

Redirect examination by Mr. SANFORD:

Q. You mean if he were walking on the pavement would he cross the improvement? If he went right across the crossing on the pavement would he go on that improvement or not?

A. If he was walking on Walnut street he would not walk on any portion that was being improved.

Q. But if he was walking on Walnut street, and walking right along Walnut street, from pavement to pavement, would he come into the improvement?

A. Do you mean by pavement the portion between the curbs?

406 Q. I mean the sidewalk. If he walked from sidewalk to sidewalk, right across Third street, would he come into that improvement?

A. If he was walking from sidewalk to sidewalk on Third street, do you mean?

Q. I mean coming along Walnut street on the east side, on the pavement or sidewalk, and crossing Third street on a staight line.

A. If he is on Walnut street, crossing Third street, he would not cross any improvement.

Q. He would not?

A. No, sir.

Q. How close would he come to it?

A. Well, there is a distance, if I remember aright—Walnut street is 60 feet wide and the distance between the curb and street line is 12 feet, so he would have that 12 feet to walk in.

Q. He would have that 12 feet?

A. Yes, sir.

A. J. WARE, a witness produced on behalf of the Government, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Squire, do you live in Chattanooga?

A. I live at Hill City.

407 Q. That is a suburb of Chattanooga?

A. Yes, sir.

Q. Do you hold any official position in this county; if so, what?

A. Justice of the peace.

Q. How long have you held that position?

A. Six years.

Q. Do you remember the night Ed Johnson was lynched?

A. I remember the night they said Ed Johnson was lynched. I did not know Ed Johnson.

Q. You did not know Ed Johnson?

A. No, sir.

Q. That was March 19, 1906?

A. Somewhere about that date; yes, sir.

Q. It was a negro prisoner in the county jail that was taken out and lynched. You remember that night?

A. Yes, sir.

Q. In March of last year?

A. Yes, sir.

Q. There was only one lynching in that month?

A. That is all I know of; yes, sir.

Q. Were you around the jail or around the lynching? Did you see the lynching that night?

A. I did.

Q. I wish you would describe to us what you saw. Tell us what you saw and who you saw.

A. I had been down in the city on a little business, and was returning back to my office about 10 o'clock, I think it was, or some-
408 thing like that. I met some negroes on the street, up here on East Ninth street, and they asked me if I knew Ed Johnson was going to be lynched that night. I said: "Why, certainly not." They insisted that he was going to be lynched, and I said I did not believe it. I went on a little further out the street and I met one of the deputy sheriffs by the name of Burk, and he said they were going to lynch Ed Johnson, the negro, that night.

Q. What are his initials?

A. J. J. Burk.

Q. Burk or Burt?

A. Burk. I told him I did not believe there was anything to it. I called a cab and we got in the cab and drove up as far as the court-house. I got out at the Georgia avenue side of the court-house and walked around and went on to the jail. There were a few people standing over next to the court-house wall, by the court-house wall. There were a few people standing in the yard. I went on into the jail office and quite a number were standing in there. I heard some noise upstairs and in a very few minutes after I was inside they brought the negro down. It had not been very long from the time I reached the jail.

Q. About what time was that?

A. It must have been in the neighborhood of 10.30 or something like that. I did not notice the time.

Q. Who was in the office when you went in there?

A. Well, there were a good many people. I recognized two or three that were standing there.

Q. Whom do you remember?

409 A. I remember seeing one young man by the name of Powell standing there.

Q. What was his first name?

A. I do not know.

Q. Is he a defendant in this case?

A. I do not know.

Q. What does he do? What is his trade or business?

A. I do not know. Then there was a little fellow named Ike Gordon.

Q. Do you know Claude Powell?

A. Yes.

Q. Was it Claude Powell?

A. No, sir.

Q. It was not?

A. No, sir.

Q. Who else do you remember seeing?

A. A young man named Gordon—a Jew, Ike Gordon.

Q. Is he here in this city now?

A. He is in Atlanta, Georgia, I understand.
Q. Who else do you remember seeing there?
A. Will Allen, a constable.
Q. A white man?
A. Yes, sir.
Q. They were all in the outer office, were they?
A. They were all in the outer office.
Q. Do you remember anybody else?
A. At that time I remembered several faces, but I do not just call to mind who they were, standing there.
Q. These men were not having anything to do with the lynching?
410 A. No, sir.
Q. They were just there like you were?
A. Yes, sir.
Q. Were you assisting in the lynching?
A. I went there with the intention of assisting Captain Shipp if he needed assistance. I thought a lot of hoodlums probably had gone up there to start something, and I thought I would give him some assistance if he needed it.
Q. These men, you say, were not engaged in the lynching, that you saw there?
A. No, sir.
Q. How long had you been there before they brought the negro out?
A. A very few minutes.
Q. Was there much noise going on inside in the meantime?
A. No, sir; not a great deal.
Q. How many men were in this office during the time you were there?
A. I suppose fifteen or twenty.
Q. Fifteen or twenty?
A. Twenty-five maybe; something like that.
Q. Was anybody in the office yard on the outside?
A. Yes, sir.
Q. Who were they?
A. I could not tell you; it was dark.
Q. How many would you say were on the outside, Squire?
411 A. I suppose there were in the jail yard probably ten or twelve or fifteen men; something like that.
Q. Were there many on the street outside?
A. No, sir; not a great many.
Q. How many would you say?
A. It did not look to me like there was over 50 or 75 men in the entire body, take them all together.
Q. You mean inside and outside?
A. Inside and outside; that is, all that gathered around after the negro was brought out.

Q. Then he was brought out; how was he brought out?
A. Why, a number of fellows had hold of him.
Q. Were they masked?
A. I think there were two or three that had something like handkerchiefs over their faces from here down [indicating].
Q. How many were there in the crowd that brought him out?
A. There looked to be eight or ten.
Q. Did they have arms? Were they carrying arms?
A. I didn't see any arms. I only saw one man inside the jail that evening with a gun.
Q. Who had that gun?
A. I don't know who he was. He was a young fellow. The gun belonged to the jail. He went inside and got it and I made him take it and put it back.
Q. Did you see any deputies there that evening?
A. None but the one that was with me.
Q. The man that went with you?
A. Yes, sir.
412 Q. Did he go in the jail?
A. He went in as I went in; into the jail lobby.
Q. Did you see any other deputy there besides him?
A. No, sir; I did not see any deputy but him. This Allen was a constable.
Q. Who were the men that brought out Johnson?
A. I do not know, sir.
Q. Did you recognize them at that time?
A. Well, I thought I recognized one, but I would not make affidavit that I did.
Q. Have you an impression about it?
A. What is that?
Q. Have you a recollection as to whom you recognized?
A. I thought I recognized a young man by the name of Warner.
Q. What is he generally called? Has he a nickname, do you know?
A. "Sheeny" Warner.
Q. How long have you known him?
A. I have known him for a number of years, but, as I told you, I would not swear it was him, because his face was blackened to some extent.
Q. His face was blackened?
A. Yes. I could not recognize him for certain, and would not say it was him.
Q. Did you speak to him?
A. No, sir; I did not speak to any one.
Q. Did you recognize or think you recognized anybody else?
413 A. That brought the negro out?
Q. Yes, sir.
A. No, sir.
Q. Did you follow along with them?

A. No, sir; I got on a street car and went down as far as Fourth street. They stopped the car there and cut the light out. I got off and walked from there to the bridge.

Q. What was going on when you got to the bridge?

A. They were fixing to swing the negro up with a rope.

Q. How many men had him in charge there?

A. It did not look like there was over a dozen.

Q. How close did you get to them?

A. I was right up against some of them. I walked right up to where the negro was standing.

Q. Whom did you see there that you recognized?

A. I saw Mr. Pritchard there, the reporter.

Q. Mr. Pritchard? He was there reporting for the Times?

A. I suppose he was. I talked to him. He was the only man I talked to on the bridge.

Q. That is Robert Pritchard, jr., I believe?

A. Yes, sir.

Q. He was a reporter for the Times at that time?

A. Yes, sir.

Q. Did you see Mr. Chivington, a reporter for the Times?

414 Q. No, sir; I did not see him. That is, if I did, I did not recognize him.

Q. There were several newspaper reporters there, were there not?

A. I don't know.

Q. Did you recognize anybody else there that night?

A. I could not say that I did positively.

Q. Well, at that time did you think you recognized them, or do you recollect anybody that you saw there that night that you knew?

A. When this negro was being swung over the bear I thought I recognized a party there.

Q. Who was that?

A. His name was Pool.

Q. What is his first name?

A. Paul Pool.

Q. Do you know where he is?

A. No, sir; I do not know anything about it.

Q. He is not here now, is he?

A. I do not know.

Q. How long has it been since you have seen him?

A. It has been—well, I do not know. I saw him after that several times.

Q. What did he do—what was his occupation?

A. If it was Paul Pool, he is a painter.

Q. How long had you known him?

A. I had known him several years.

Q. Had you known him pretty well?

415 A. Well, I knew him when I would see him. That is about all.

Q. How close were you to him?
A. Why, several feet.
Q. Several feet from him?
A. Yes, sir.
Q. Were there lights there over the bridge—electric lights on the bridge?
A. Well, there are lights there, but they are poor and dim and did not give much light. You could not recognize a person.
Q. Did you speak to Pool?
A. No, sir.
Q. Did you recognize anybody else there, Squire?
A. Why, at that time I think I recognized, or thought I recognized, several people standing around.
Q. Who were they that you recognized?
A. It has been so long that I do not remember. I did not charge my memory with this and did not try to keep it in my mind.
Q. Give us your best recollection; endeavor to recollect who you saw there standing around and what they were doing.
A. Apparently the majority of them were doing just as I was—standing there.
Q. Did you see anybody put a noose around Johnson's neck?
A. I saw them when they tied the rope around his neck.
416 Q. Do you remember who did that?
A. No, sir.
Q. Did you see who did that?
A. Did I see the man?
Q. Yes.
A. I saw it when it was being done.
Q. Did you recognize the man?
A. No; I can not say that I did.
Q. Did you think you recognized him at that time?
A. Well, I thought I knew, but I would not be sure.
Q. Who was that?
A. Do you want facts or just my ideas about it?
Q. You know whether you recognized him or not, of course.
A. I say I thought I did, but I will not say I did. I would not make affidavit that I knew him.
Q. How long had you known the man you thought you recognized?
A. I have known him quite a while.
Q. How well have you known him?
A. Not so very well—not enough to recognize him and know him in the dark.
Q. Well, you are the one who has to do the swearing. You are the witness. Did you recognize the man there?
A. I say I did not know him well enough to recognize him and know him in the dark. I thought that I did.
Q. Who was it? What is your best impression as to the man who put the noose around Johnson's neck?

417 A. I thought I recognized one of the parties as Nick Nolan.

Q. One of the parties that was putting the noose around his neck?

A. That had hold of the rope.

Q. What does Nick Nolan do?

A. I think he runs a bar.

Q. How long have you known him?

A. I have known him for some time.

Q. Did you recognize anybody else besides Pool, and the one you thought you recognized as Nolan?

A. I could not say that I recognized anybody that had hold of the negro at all.

Q. Did you see anybody fire any bullets into him?

A. Yes, I saw some men shoot him.

Q. Who was that?

A. I don't know who it was.

Q. Who did you recognize as the man?

A. I thought it was Luther Williams.

Q. How long have you known Luther Williams?

A. I have known him some four or five years.

Q. How often do you see him?

A. Not often.

Q. How close were you to these men when this was happening?

A. When the shooting began I got back out of the way.

Q. How close were you when the noose was being put around his neck?

A. I was as close as I am to that table [indicating].

418 Q. When this man that you thought was Luther Williams was shooting, how close were you to him?

A. I was probably as far as from here to the radiator over there.

Q. Which way were you?

A. I was back behind, toward the city.

Q. How far are you from the radiator now, in your judgment? How far is that in feet?

A. It is about 22 or 23 feet.

Q. 22 or 23 feet. Did you recognize anybody else there that night, Squire? Did you see anybody help to put the noose around his neck with the man that you thought was Nolan?

A. I do not know that I recognized any one positively. I do not know that I can remember now of any one else that I even thought I knew.

Q. Make your best effort to recollect and see if you can recollect anybody else that you recognized there that night—anybody else that was shooting or helping with the noose or helping to bring him out from the jail.

A. I did not recognize any one coming out of the jail. I thought I recognized one; that was all.

Q. The man you have already spoken of?

A. Yes.

Q. That is Warner?

A. Yes.

Q. Did you recognize anybody helping him?

A. I said I did not.

419 Q. Was there one, or were there two men who had hold of him when he came out, Squire?

A. I don't know how many had hold of him. They were in a bunch. It seemed like everybody was trying to get hold of him, or trying to be up next to him.

Q. I will read you a list of the defendants in this case and ask you whether you saw any of those there that night: Frank Jones, Matt Galloway, C. A. Baker, T. B. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, Nick Nolan, Sheeny Warner, Luther Williams, Paul Pool, Will Marquette, Will Beeler, Claude Powell, Charlie Powell, Bart Justice, Johnnie Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond. Did you recognize anybody else now?

A. I saw Mr. Galloway there after the lynching, Mr. Perkins, and Deputy Sheriff Jones.

Q. When did you see them?

A. I think the negro had been removed from the bridge then.

Q. The negro had been removed from the bridge?

A. Yes, sir.

Q. What were they doing?

A. Mr. Galloway had a Winchester rifle. I talked to him just a little. He told me he heard there was a disturbance up there and he came up to see about it.

Q. Anything further?

A. That is all.

420 Q. Did he tell you what he came for? Did he say anything else?

A. No, sir; that is all I remember his saying to me. We did not say but a word or two. I was fixing to leave the bridge, and they came up after the lynching was all over.

Q. Did he tell you why he came? Give your best recollection now.

A. I just stated that he said he heard there was a disturbance up there and came up to help put it down, or words to that effect.

Q. What kind of a disturbance? A disturbance in reference to a lynching, or after the lynching?

A. As near as my recollection serves me, those are all the words I had with him at all.

Q. You do not think he explained anything about the disturbance?

A. No, sir; I am pretty sure he did not.

Q. Did you see anybody else there that you can remember besides the men you have mentioned—those men whose names I have read?

A. I do not remember seeing any one else you have named there. There was another deputy sheriff, too, that I do not just recall, when Mr. Galloway came.

Q. What time was he hung; what time of the night?

A. I think it was between 10.30 and 11 o'clock.

Q. Between 10.30 and 11 o'clock?

A. Somewhere along in there.

Q. How many people went out to the lynching, would you say, altogether?

421 A. Right at the time I do not think there were over 50 or 75 people there.

Q. How many of them were actively helping in the lynching and how many were just looking on?

A. It did not look to me that there were over ten or twelve taking an active part.

Q. And the balance were just looking on, like you were?

A. Standing back, yes, sir; not taking any part at all.

Q. The man that you saw at the jail first, you think was not Claude Powell. Do you know Charlie Powell?

A. I know him well.

Q. Was he the man you saw there in front of the office?

A. No, sir.

Cross-examination by Mr. PRITCHARD:

Q. Mr. Ware, about what time was it that these negroes first said that Ed Johnson was going to be lynched?

A. I think it was about ten o'clock, as near as I recollect.

Q. How soon after that was it that you had the conversation with Burk?

A. About five minutes.

Q. Immediately after; just a few minutes after?

A. Yes, sir.

Q. And then you got this hack and went to the jail and found a crowd of people there?

A. Yes, sir.

422 Q. And the negroes and Burk had both heard that these people were after him?

A. Yes, sir.

Q. You did not believe it?

A. No, sir; I did not believe it.

Q. The excitement had all subsided practically at that time in regard to this rape, had it not?

A. Well, it was not like it had been.

Q. You were not expecting any lynching?

A. No, sir.

Q. And the public were not expecting any lynching, so far as you knew?

A. I think not.

Q. You were a justice of the peace at the time?
A. I was.
Q. And you had an office on East Ninth street, where great numbers of people congregate?
A. Yes, sir.
Q. And you had heard nothing of it?
A. I had heard that afternoon there was going to be a lynching.
Q. But you did not believe it?
A. No, sir.
Q. There was no state of public excitement that led you to expect anything of the sort?
A. I did not.
Q. When you saw Matt Galloway with the Winchester rifle, that was after the negro had been removed?
423 A. The negro had been removed from the bridge.
Q. And the negro remained out there some little time after the lynchers had dispersed?
A. Yes; I think in the neighborhood of an hour.
Q. They sent a wagon after him, somebody's wagon—Sharp's wagon?
A. Chapman's, I believe.
Q. After he was removed from the bridge, and somewhere near midnight, you saw Galloway?
A. Yes, sir.
Q. And he had a Winchester rifle?
A. Yes, sir.
Q. And he said he understood there had been a disturbance and he had come to help suppress it?
A. Some words to that effect. That was the meaning of it that was conveyed to me at the time.
Q. You understood that he had reference to the lynching?
A. Yes, sir.
Q. That is where you saw the other persons that you referred to?
A. Yes, sir.
Q. At the jail you did not see Captain Shipp?
A. No, sir.
Q. He was not there, or at least you did not see him?
A. I did not see him.

By Mr. SHEPHERD:

Q. Mr. Ware, I understood you to say that you were not
424 at all certain you recognized Mr. Nolan there?
A. I am not.
Q. Your acquaintance with Mr. Nolan was so slight that you were not able to recognize him there on the bridge in the dark that night?
A. That is right.
Q. That is correct?
A. Yes, sir.

By Mr. CHAMLEE:

Q. Relative to Mr. Warner, if you saw him at all that night—the man you referred to, you say, was a man that you could not recognize? You said that he had his face blackened, did you?

A. Yes, sir; there was smut or something on the face of the man.

Q. There was something on the face of the man you referred to, and you could not say that it was Mr. Warner at all, and do not say it now?

A. I would not attempt to say it was him, positively; no, sir.

Q. This was a dark night, and it was dark at the place where you saw him?

A. No; it was light where I saw him. I saw him in the jail lobby.

Q. Still, you do not attempt to say it was Mr. Warner?

A. No, sir.

Q. You referred to a man, out at the bridge, that you said at
425 the time you had some suspicion or intimation in your mind was Mr. Williams?

A. Yes, sir.

Q. You do not say it was Luther Williams, a defendant in this case, who was the man you saw there?

A. I do not say it was him positively; no, sir. I would not make affidavit that it was him.

Q. You do not know who the man was?

A. I am not sure as to who it was.

Redirect examination by Mr. SANFORD:

Q. You knew all these men, though, at that time? You had known all these men before?

A. Oh, yes.

Q. And you thought at that time they were the men you have named?

A. Not any more than I think now. My opinion is as strong now as it was then.

Q. Your opinion is as strong now as it was then?

A. Yes; I do not know whether it was them or not.

Q. But you thought it was?

A. I thought it was.

Q. Was it, or not, your best impression at the time?

A. Well, I thought it so strongly that I am telling you I thought it was them. If I had not thought it was them at the time I would not say so now; but I would not make affidavit that it was Luther Williams, and neither would I that it was Nick Nolan, nor
426 Sheeny Warner, because it was so dark that you could scarcely recognize a man.

Q. Except the one you saw in the lobby?

A. I walked up by the side of Mr. Pritchard, right against his shoulder, before I was sure it was Bob Pritchard, and I have known him since he was a boy.

Q. Somebody hit Mr. Pritchard that night, did they not?

A. Yes.

Q. Did you see the lick?

A. I did.

Q. Who hit him?

A. I don't know who he was. I caught the man by the shoulder that struck him.

Q. Do you know who it was?

A. I told you Mr. Nolan that I thought was standing there.

Q. Oh, I did not understand that. It was Mr. Nolan you thought that hit Mr. Pritchard?

A. Yes, sir.

Q. I had not caught that. I see. Squire, at that time when Mr. Galloway came up, how long was it after the lynching?

A. It must have been an hour or probably longer.

Q. Do you know whether there had been any rumor that the negroes were going to go for the lynchers? Had you heard anything of that sort?

A. There was some shooting down on the right-hand side of the bridge, and I got two or three little shot through an
427 overcoat that I had on. I thought by that it was them. It came from the upper side.

Q. Was there anything in what Galloway said to show what thing it was he had come to suppress—the lynching or the shooting after the lynching?

A. I did not ask him.

Q. Did he say anything which would show which it was?

A. No, sir.

Q. So you do not know who he came to defend or what he came to do? It was an hour afterwards, and his words did not tell you which it was?

A. I have known these deputy sheriffs pretty well, and I always found them ready to suppress anything——

Q. I did not ask you that, but what he said.

A. That was the way it impressed me. You want my impression?

Q. No. I am asking what he said.

A. I was only giving my impression, you know, and not my knowledge.

Q. I was asking if there was anything he said.

A. Nothing; any more than what I have stated.

Q. You said somebody told you that afternoon there was to be a lynching. Do you remember who it was?

A. A friend of mine.

Q. Do you remember his name?

A. He is dead. It would not be worth anything to you. It was Harry Haverkamp, a city detective. He said he heard it was going to be done.

428 Q. A city detective, did you say?

A. Yes, sir.

Recross-examination by Mr. CLIFT:

Q. You did not communicate what Haverkamp said to you to any one?

A. No, sir.

Q. You did not believe it?

A. No, sir; I did not believe it.

By Mr. SANFORD:

Q. When did he tell you that story?

A. About between two and three o'clock in the afternoon.

Mr. SANFORD. Do you waive Squire Ware sitting in the room? I have no objection.

Mr. SHEPHERD. Let him stay so far as I am concerned.

Mr. CLIFT. We have no objection.

Mr. SANFORD. I have not either. I just wanted to call your attention to the matter.

429 M. STOKES (colored), a witness produced on behalf of the Government, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. What is your name?

A. M. Stokes is my name.

Q. You live in Chattanooga?

A. Yes, sir.

Q. How long have you been living here?

A. About 21 years.

Q. What is your business?

A. Well, I have been contracting for the last two years—building. I have been in the grocery business about ten years.

Q. You were in the grocery business and now you are a contractor?

A. Yes, sir.

Q. Do you remember the night Ed Johnson was lynched?

Q. Yes, sir.

Q. Were you living in Chattanooga at that time?

A. Yes, sir.

Q. Stokes, do you know the defendant, John Jones or Johnnie Jones?

A. Yes, sir.

Q. Do you know the defendant, Henry Padgett?

A. I just know of him in passing. I don't know much about
430 Mr. Padgett. I just know him when I see him some time in passing.

Q. Do you know the defendant, Charles J. Powell?

A. No, sir; I am not acquainted with him.

Q. Now, take those men that I have named, and tell me if you saw any of them on the day or night that the lynching occurred; and, if so, where you saw them and what they were doing.

A. Well, when I went over there——

Q. What time did you go?

A. I went over there some time between 10 and 11, I think, as near as I could recollect.

Q. Day or night?

A. It was at night.

Q. Over where?

A. Over to the court-house. I went to the court-house first—on the front side next to the Baptist Church. Some one had came down through the hall and say they was lynching him, and so we all went out. So I went around by the church and came down 9th street and went up 8th street by Judge Shepherd's house on 8th street and on back, and went to the front, and I stopped to see could I hear any hammering. They say they was breaking it open, and I didn't hear anything and didn't see anything. Then I goes on like I was going up—High street, I think I was on. So I got to the far corner of the court-house, and I didn't hear anything still and didn't see anybody. Then I went down the street to the next corner, and I stopped right on the corner there where a pair of steps goes up, and I didn't
431 hear anything still, and I goes up a little further towards the jail. I was on one side, just across the street. So still I didn't hear any hammering, and I just saw a crowd of small men there; it seemed to me about between 25 and 30 probably along like that. So I never heard any hamering at all; so I stopped there, and I heard some talking in the jail, like they was going out and moving around; so I went back up to the corner and I saw a gentleman sitting down on the steps. I knew him and he knew me, and I spoke to him. Then he ups and was talking about this business going on at that time. So we talked till they come out of the jail with this fellow.

Q. That was Ed. Johnson?

A. Yes; Johnson. So he asked me did I know any of the people there. I says, "Not as I know." I hadn't noticed closely yet. And he says: "Well, it is a shame that those men do that." He says, "That man belongs to Uncle Sam, and they ought to let him do whatever they want with him"—just that way. I said, "Yes." So then he called over several names, and I says, "Well, so far as Mr. Jones"——

Q. Wait a minute. Your conversations with other people are not evidence in this case. I have asked you about certain people.

A. That is what I was going to say. Then I commenced noticing when he called those names. I just come back up a little piece, and when he called those names the one I could recognize to the best of my judgment—the best that I could recollect—was Mr. Jones.

Q. That is John Jones or some other Jones? What Jones was it?

432 A. It was John Jones.

Q. What business was he in?

A. I don't know what business he is in now. I couldn't say.

Q. What was he in at that time?

A. I don't know, sir. I couldn't say.

Q. Did you see Mr. Padgett?

Mr. PRITCHARD. Do not tell him the names. That is not fair. Ask him if he saw anybody.

By Mr. SANFORD:

Q. You say you saw Mr. Jones. Where did you see him?

A. That was just in front of the jail door, there at the steps. The crowd was standing in ranks about two deep, just above, this side of the jail door, this way; and one or two, I disremember now which—one, I think—had a red cloth.

Q. A red cloth?

A. Yes, sir.

Q. You mean one of whom?

A. I don't know who that was.

Q. I say, one of whom?

A. One of those men that was in that crowd.

Q. What crowd? You have not described the crowd yet.

A. The crowd that was taking Ed Johnson.

Q. One of the crowd had a red cloth?

A. Yes, sir; and several had their coat collars and shirt collars turned up, or something like that.

433 Q. Where was Mr. Jones when you saw him? What was he doing?

A. He was in the rear end of the rank.

Q. Of what rank?

A. The rank at the jail there.

Q. Where was he with reference to Ed Johnson? Was he with him, or around him, or away off, or where was he?

A. He was right there in the ranks with the other crowd; that is all that I could say. Because they hadn't come out of the jail then. Johnson wasn't there at that time.

Q. You mean that was before they brought Ed Johnson out that you saw him?

A. Yes, sir.

Q. How long before?

A. Well, it was a very few minutes; I couldn't say. It was a short while.

Q. Where was he when you saw him?

A. Well, they all was standing kind of like soldiers, two deep, I think, and he was in the rear end. They was all lined up along, and he was back behind the crowd.

Q. What was he doing?

A. They all wasn't doing anything. They was standing still at that time.

Q. What did he do afterwards? Did you see him do anything afterwards?

A. I saw him when they all left the jail. To the best of my
434 knowledge, it seemed to me there was three or four men had hold of Johnson; but who they was I couldn't say.

Q. What did Mr. Jones do when they came out with Johnson, if you saw him?

A. Well, they all got to talking and going on, and so they all got together and went on up the street; they passed by me going on up the street.

Q. I am asking you what Mr. Jones did.

A. It seemed like he was there stirring around with the rest of them. I didn't see any particular thing, only just he was there with the crowd.

Q. Did you hear him say anything?

A. No, sir. I heard a word said: "We have got Ed Johnson and we will come back and get another one."

Q. Who made that remark?

A. Now which one I couldn't say.

Q. What is your recollection about it?

A. I couldn't say. It was spoken in the crowd there, and I couldn't say which one said that word.

Q. You can not say which one it was?

A. No, sir; I couldn't say.

Cross-examination by Mr. PRITCHARD:

Q. Stokes, you did not tell us the name of the gentleman that you were talking with.

A. That was Mr. Arthur Stewart.

Q. Where does he live?

435 A. I don't know. He was a peddler.

Q. Where does he live now?

A. I don't know, sir. I never did know where he lived; somewheres up in the country here.

Q. Where did you say this man was?

A. He was at the far steps yonder, on the right-hand side.

Q. Of the jail?

A. Of the court-house.

Q. On which side? Do you mean on the side towards the Baptist church or the side towards the jail?

A. Towards the jail.

Q. He was on the steps?

A. On the steps.

Q. Of the court-house?

A. Yes, sir.

Q. And you say you would not have known anybody at all if Mr. Stewart had not named over these names to you?

A. When he called those, I looked back and stood there as the crowd passed. I got behind a telegraph post on the corner.

Q. And you told Mr. Sanford, as I understood you, that it was Stewart's naming the names that made you know the names?

A. Well, he was speaking about them, and I then watched the crowd closely to see——

Q. To see if you could identify anybody?

A. Yes, sir.

436 Q. Where were you at that time? Were you at the steps, too, at that time?

A. When I was talking to him?

Q. Or when you were making these observations?

A. Well, I had walked up—we had been talking and they had come out——

Q. Where did you go?

A. I was there, too, but I had come nearer towards the jail.

Q. At which place were you at the time you were making the observations?

A. I was right at the corner as they passed there going up the street.

Q. What corner?

A. Corner of 6th and Walnut.

Q. You were at the corner of 6th and Walnut?

A. Yes, sir.

Q. That is what I am trying to get at. Now, how far is the corner of 6th and Walnut from the jail?

A. Well, the jail, I suppose, would be about in the center of the block, but they were coming across on the next corner——

Q. I did not ask you what they were doing. I am asking you how far it is.

A. About the middle of the block.

Q. And you were a couple of hundred yards away at the time?

A. No, sir.

Q How far?

437 A. Well, when I was looking at those men I was just on one corner and they were passing in front of me.

Q. Then you identified them as they passed you at the corner, did you?

A. Yes, sir.

Q. Why didn't you tell Mr. Sanford that?

A. That is what I told Mr. Sanford.

Q. Then if Mr. Sanford understood you, and the stenographer has it down, that you saw these men at the time they were coming out with Ed Johnson, that is wrong?

A. I didn't say that.

Q. You did not mean to convey that idea?

A. I say I saw them as they were coming up the street, and I was at the corner behind the telegraph post.

Q. Then the place you saw them was not at the jail?

A. The place where I recognized them.

Q. The place where you recognized them was not at the jail at all, but was at the corner of 6th and Walnut streets?

A. Yes, sir; when they were coming up the street.

Q. You were standing there at the telegraph post, and the men that you said you recognized were in the rear rank?

A. Yes, sir.

Q. Just following along?
A. Yes, sir.

By Mr. SHEPHERD:

Q. Stokes, you are a negro man, are you?
A. Sir?
Q. I say, you are a negro; is not that true?
438 A. A which?
Q. A negro?
A. No, sir.
Q. What are you—a mulatto?
A. No, sir; I am colored.
Q. Who colored you?
A. I don't know. God, I guess.
Q. How many men named John Jones do you know?
A. Well, I don't recollect, Judge, how many I know.
Q. John Jones is a very common name, is it not?
A. I know some just slightly, and some that I knowed I recollect for quite a while.
Q. Do you know that the John Jones that you are referring to is the same man that is a defendant in this case?
A. Well, that is the one that I have reference to.
Q. How do you know he is a defendant in this case?
A. How do I know?
Q. Yes.
A. I don't know only just what I saw there. That is all that I know.
Q. You do not know whether that man is a defendant in this case or not, do you?
A. I couldn't say.
Q. You have not seen him around the court-house here, have you?
A. No, sir; not to my recollection.
Q. He is not in the court room now, is he?
A. I don't know, sir.
Q. Can't you look around and see?
439 A. I don't know, sir. He may be here.
Q. Look around the room and let us find out if he is.
A. No, sir; I don't see him to know, the one that I am speaking of.
Q. You do not see the man that you are speaking of at all, do you?
A. No, sir; I think not.
Q. Take a careful look at all these men around here, and let us see how that is.
A. No, sir; I don't see him.
Q. Is not that he sitting over there by Mr. Galloway; the man with the mustache, sitting by Mr. Galloway?
A. I don't know him, sir.
Q. You do not know him at all?
A. No, sir.
Q. Now where is Padgett?

A. I think that is he [indicating], to my recollection.
Q. That white-haired fellow in the window there?
A. Yes, sir.
Q. Now where was Padgett when you say you think you saw him at the jail?
A. Well, to my knowledge, Judge, they was all there together.
Q. What was he doing?
A. Well, I couldn't say directly what he was doing.
Q. You do not know whether he was there as a looker-on, a spectator, or as a mobber, do you?
A. No, sir; I couldn't say.
Q. He was not inside the jail, was he?
440 A. No, sir; I didn't see him inside the jail.
Q. He was not one of the fellows that came out of the jail with Ed Johnson?
A. I don't know whether he was or not.

Redirect examination by Mr. SANFORD:

Q. When did you first recognize Mr. Padgett?
A. That was when they were leaving the jail, Mr. Sanford.
Q. When they were leaving the jail?
A. They got nearer to me when they were leaving than they was when they was coming out.
Q. When they were taking Johnson out, you mean; when they were leaving the jail with Johnson?
A. No, sir; they all was leaving then, and they were nearer to me then than they was before.
Q. And they passed you at the time you told Mr. Pritchard they passed you?
A. Yes, sir.
Q. And that was the time you saw Mr. Padgett?
A. Yes, sir.

Recross-examination by Mr. PRITCHARD:

Q. Where is that post that you speak of? Is it an electric-light post, or what sort of a post is it?
A. I don't remember what kind. It is a post right on the corner.
441 Q. At the corner of Walnut and 6th street?
A. Yes, sir.
Q. Which corner?
A. On the right-hand side going up.
Q. It is on the corner, then, of the court-house wall?
A. Yes, sir; right along there.
Q. It would be the corner of the court-house wall that points toward the northwest, would it?
A. Yes, sir; I guess so.
Q. Well, you know, do you not?

A. Yes.

Q. It is the corner of the court-house wall that points toward the northwest?

A. Yes, sir.

Q. And that is the post you were behind?

A. Yes, sir.

Q. Was anybody else with you behind that post at that time?

A. There wasn't anybody but me and this gentleman I was speaking of.

Q. Was he a white man or a colored man?

A. He was a white man.

Q. There was no colored man behind that post, was there?

A. Not with me.

Q. Well, there was nobody there at the time?

A. There was two boys came up the street, and they come inside there; but who they was I don't know.

442 Q. But there was nobody standing behind that post while you were there?

A. Not with me.

Q. Well, without you, then; with you or without you?

A. Not as I saw. I was busily engaged in looking, and there might have been more there; but I was busily engaged looking at the people.

Q. Do you mean to say you can not tell whether or not there was somebody else standing there at the same time you were there and behind the same telegraph post that you were standing behind?

A. Oh, there wasn't anyone behind the post.

Q. There was not?

A. No, sir.

Mr. SANFORD. Is Mr. Jones in the room?

Mr. PENLAND. Let him stand up.

Mr. PRITCHARD. I object to that.

(The defendant, John Jones, stood up as requested.)

By Mr. SANFORD:

Q. Look at the gentleman who has just stood up and state if that is the one that you saw?

A. No, sir.

Q. It is not?

A. No, sir.

Mr. SANFORD. Mr. Commissioner, I ask an adjournment until to-morrow morning. I think we can finish to-morrow morning.

Mr. CLIFT. Wait one moment.

443 Mr. SANFORD. Is it agreed that Mr. Padgett is the man that he pointed out?

Mr. PRITCHARD. I do not represent Mr. Padgett.

Mr. SANFORD. Do his counsel agree to that?

Mr. SHEPHERD. He pointed out Padgett.

The COMMISSIONER. If there is no objection, we will stand adjourned until to-morrow morning at 10 o'clock.

(Thereupon, at 11.30 a. m., the hearing was adjourned until Wednesday, June 12, 1907, at 10 o'clock a. m.)

444 CHATTANOOGA, TENNESSEE, *June 12, 1907.*

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland; and counsel for the various defendants.

The COMMISSIONER. The commission will resume the hearing of the United States *vs.* Shipp and others.

Mr. SANFORD. Call Arthur Waller.

Mr PRITCHARD. Before the witness comes in I would like to state that I understand, and perhaps the attorney-general will agree without the necessity of producing the record, that this witness has been convicted in the Circuit Court of Hamilton County, the state court, of voluntary manslaughter.

Mr. SANFORD. I understood it was involuntary.

Mr. PRITCHARD. Voluntary manslaughter, I understand.

Mr. SANFORD. Whatever the record shows.

Mr. PRITCHARD. I want to save the introduction of the record.

Mr. SANFORD. We will agree to whatever the record shows.

Mr. PRITCHARD. The record will show that he has been convicted of voluntary manslaughter and for this crime has been sentenced to the state penitentiary for a term of years at hard labor, and that

445 he is now confined in the penitentiary under that sentence of the court. The proposition that I desire to make is that that man is not a competent witness in this case; that this not being a proceeding in a federal court held within the State the rules of the common law apply, and under the common law a man convicted and sentenced to imprisonment in the penitentiary has, by virtue of the nature of that punishment, been convicted of an infamous crime, and that he is therefore incompetent to testify unless there is some statute changing the common law; that the statute of the United States which changes the rule of the common law only applies to the federal courts held within the State, and provides that witnesses who are competent by the law of the State in which the court is held shall be competent, but no others; and that this being a proceeding not in any federal court held within a State the rules of the common law apply, and that therefore the witness is an incompetent witness. I desire to make that point.

Mr. SANFORD. Certainly.

Mr. PRITCHARD. And unless the record is waived, as I understand by the rules of the common law even the admission of a witness would not properly make the question, and I would have to produce the record.

Mr. SANFORD. We waive the introduction of the record, and agree that you may show just what the record shows, as if the record were

introduced in evidence. It was either voluntary on involuntary manslaughter, I understand; I do not remember which.

Mr. PRITCHARD. Without introducing the record we will
446 agree on what the record shows. Let the record show that those facts are conceded, and that the production of the record is waived by the prosecution and that exception to the examination of this witness is made.

ARTHUR WALLER, a witness produced on behalf of the Government, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. PENLAND:

Q. Is your name Arthur Waller?

A. Yes, sir.

Q. Arthur, state whether or not you are now a prisoner in the state prison of this State—the state penitentiary.

A. Yes, sir; I am a prisoner in the state penitentiary.

Q. How long have you been there?

A. I have been there eight months and two days; nine months the 3d of July.

Q. For what were you sentenced to that institution?

A. Involuntary manslaughter.

Q. For how long?

A. Two years.

Q. Were you, prior to the time you were sent there, in the Hamilton County jail at Chattanooga?

A. Yes, sir.

Q. Where were you tried for the offense of manslaughter?

A. I was tried in Hamilton County.

Q. When did you leave the Hamilton County jail; about when?

447 A. I don't remember.

Q. Were you in the jail at the time Ed. Johnson, a colored prisoner, was taken out of the Hamilton County jail and lynched?

A. Yes, sir.

Q. What part of the jail were you in?

A. I was in the second floor from the top. I don't know how many stories there are in the jail.

Q. Do you know which floor Johnson was on?

A. He was on the top floor.

Q. Who else was on the floor with Johnson?

A. Harry Fitzsimmons and a woman by the name of Baker, I think. They were on the upper floor, but they were not in the same ward with Johnson.

Q. Who is Harry Fitzsimmons?

A. He was a man that was charged with murder.

Q. Where is he now; do you know?

A. He is dead, I think.

Q. Who was on the floor with you at the time Johnson was taken out and lynched?

A. Why, there was several there. John Roach was about the only one I remember positively.

Q. Was he in your cell?

A. No, sir.

Q. Where was he in reference to the cell that you were incarcerated in?

A. He was in the cell next to the door; one cell above me.

Q. Next to the door?

448 A. He was towards the door from me. He wasn't next to the door.

Q. What time did the crowd that took Johnson out and lynched him come there that night? Did you hear them when they came?

A. Why, I suppose it was half past eight o'clock. I couldn't say. I don't remember the exact time.

Q. Did you hear the noise of people talking and coming in; if so, what did you hear and see?

A. I heard the noise of them coming in. They battered the door down.

Q. How is that?

A. I heard the noise of them coming in, talking and hollering.

Q. What did they do after they came in?

A. It seemed to me that they cut the lock off the door, or cut something.

Q. What made you believe that?

A. Why, by the noise they was making.

Q. What kind of noise?

A. Hammering.

Q. Hammering?

A. Yes, sir.

Q. How long was it after they came until they left with the prisoner, so far as you could judge?

A. I don't know, sir.

Q. You have not much idea of the time?

A. No, sir.

Q. Was it a short while or a considerable time?

449 A. Why, I couldn't state, Mr. Penland. It must have been half an hour or more. I don't know.

Q. Do you know whether or not the prisoner, Harry Fitzsimmons, was taken from the upper floor that day, where Johnson was?

A. No, sir; I don't know.

Q. Do you know that he was brought down from up there?

A. Yes, sir; he was brought down.

Q. What time was he brought down?

A. I don't remember.

Q. Give as near as you can the day.

A. The day of the lynching or the day before.

Q. How is that?

A. He was brought down twice. He was brought down when they made the first attack on the jail.

Q. When they made the first attack on it?

A. Yes, sir; and then carried back, and then brought down again. I don't know exactly what time they brought him back.

Q. I did not quite understand your remark a while ago as to when he was brought down—what day.

A. What day of the month?

Q. No; what day was he brought down in reference to the lynching, as you best remember?

A. I couldn't say positively whether it was the day of the lynching or the day before.

Q. Was it one or the other?

A. It was one or the other; yes, sir.

Q. What time of day was he brought down?

450 A. I suppose it was half past three or four o'clock.

Q. In the evening?

A. Yes, sir.

Q. Who brought him down?

A. Jailer Brown.

Q. Was he day jailer or night jailer?

A. Day jailer.

Q. Did you hear any conversation about the time that he was brought down, between Jailer Brown and any other party?

A. I heard Roach ask him if he was looking for a mob that night, and he said he didn't know; it looked pretty warm outside.

Q. That it looked pretty warm outside?

A. Yes, sir.

Q. Who was Roach?

A. Roach is the man that was serving a term in the penitentiary.

Q. He was in there serving a term?

A. Yes, sir. I don't know whether he was sentenced then or not.

Q. Was he out in the corridor, outside of the cells, when this conversation took place, or was he in a cell?

A. He was in the corridor.

Q. State whether or not Roach held any official position in there. Was he a trusty or anything like that, while he was in there?

A. Not as I know of. They call him a floor boss. I don't know whether he is appointed by the sheriff or what.

Q. Did he act as floor boss?

451 A. Why, he kept the thing clean; kind of looked after it.

Q. He kind of looked after the thing?

A. Yes, sir.

Q. Do you know why they brought Fitzsimmons down that evening, whether it was that evening or the evening before, as you state?

A. Do I know why?

Q. Why they brought him down?

A. No, sir; I don't know.

Q. Did Roach ask Brown why he brought him down?

A. No, sir; he never asked him particularly why he brought him down. He asked him if he was looking for the mob that night.

Q. And that was at the time he brought Fitzsimmons in?

A. That was the time when this conversation passed.

Q. Did you see Jailer Brown the next morning after the lynching, Waller?

A. Yes, sir.

Q. Where did you see him?

A. I seen him there in the jail.

Q. Where did he say he stayed the night before? Did he make any statement about that?

A. He said he stayed in Hill City.

Q. In Hill City?

A. Yes, sir.

Q. Did he say anything about where his family stayed?

A. No, sir; not that I remember of.

Q. Did he state why he went to Hill City?

452 A. No, sir.

Q. What time did he come in that morning?

A. I don't know, sir, what time he came. It was about 7 or 8 o'clock, I suppose, when I seen him.

Q. Waller, did the jailer keep a chain about the circle door of your division—your floor?

A. Yes, sir.

Q. Was it there all the time or just occasionally?

A. Why, I couldn't state positively. It was not there at all times. It was there, I think, though, all the time while this excitement was up.

Q. How did they have the chain fixed, and what kind of a chain was it? Explain it.

A. Why, it was half an inch lengths, I suppose—half an inch diameter.

Q. Would that be a large chain?

A. Yes, sir; that would be a good sized chain.

Q. How did they have it fixed about the door?

A. They had it chained around the studding of the circle door, and chained to the circle, and then pulled inside and locked to one of the bars.

Q. Did that more securely fasten the door?

A. Yes, sir.

Q. And it would make it more difficult for any one trying to break in by force from the outside?

A. Yes, sir; I think it would.

Q. How would they get the chain loose if they were trying to break in? Would there be any way except unlocking the lock or cutting the chain?

453 A. I don't remember any way of cutting it loose without breaking the lock or cutting the chain.

Q. Do you know whether or not they kept such a chain on the upper floor at Johnson's cell?

A. I couldn't say positively. I have heard them dragging chains around up there over the iron floor several times.

Q. But you do not know whether they had any up there or not?

A. No, sir. I never was up there while he was up there.

Q. How is that?

A. I say I never was up there while Johnson was up there.

Q. The chain could be easily moved from one floor to the other?

A. Yes, sir.

Q. Where was the chain on the night that Johnson was lynched?

A. Which chain is that?

Q. The big chain; the one you speak of.

A. There was one on our door.

Q. Do you know whether they had more than one chain there or not?

A. Yes, sir; I have seen more than one there.

Q. They did not keep but one on any one door?

A. No, sir.

Q. And you think you are pretty certain that there was one on your door the night of the lynching?

454 A. Yes, sir; I am sure there was one on our door that night.

Q. Did anybody try to break into your cell that night?

A. No, sir.

Q. No effort was made to do that?

A. No, sir.

Q. I mean the circular door on your floor?

A. No, sir; not that I remember of.

Q. Could you hear the talking on the outside, in the hall or corridor?

A. I could hear the voices, yes, sir; but I couldn't understand what they were saying.

Q. You could not understand what they were saying?

A. No, sir.

Q. Did you know the voice of any man or any person that you heard out in the hall that night?

A. No, sir.

Q. You could not tell anybody at all from their voice?

A. No, sir.

Q. Did you see anybody out there that night?

A. Why, I seen men out there. I never recognized the men.

Q. You saw men but you could not recognize any of them?

A. Yes, sir.

Q. How did you see them?

A. I seen through a hole in the door where the lock goes on.

Q. Was that the circle door?

455 A. No, sir; that was the cell door. You could see out through the circle door.

Q. You could see through the circle?
A. Yes, sir.
Q. But you could not identify anybody that was on the outside?
A. No, sir.
Q. I will ask you whether or not, when Brown replied to Roach about whether he was expecting a mob, he used any profane language in his answer?
A. Not that I remember of.

Cross-examination by Mr. STANFIELD:

Q. How old are you, Mr. Waller?
A. 23 years old.
Q. Where was your home before you were arrested for this offense?
A. I lived at Alton Park.
Q. How long have you resided at Alton Park?
A. I suppose I have been there four or five months.
Q. Where did you come from?
A. I come from Retro, down there.
Q. Retro, this State?
A. Yes, sir.
Q. How long did you live in Retro?
A. I lived there close to two years.
Q. Where did you come from before you went to Retro?
A. I lived down here in Georgia.
456 Q. Were you born in Georgia?
A. Yes, sir; I was born in Georgia.
Q. Mr. Waller, who was the night jailer at the time of this lynching?
A. Mr. Gibson.
Q. Captain Brown was day jailer?
A. He was day jailer; yes, sir.
Q. What were Captain Brown's hours; do you know?
A. No, sir; I don't know.
Q. Do you know whether or not he came on at six and went off at six?
A. No, sir; I couldn't state that. I don't know.
Q. You know that he was the day jailer and that Mr. Gibson was the night jailer?
A. Yes, sir.
Q. During the night does the night jailer make rounds through the cells—through the corridors where the cells are?
A. He goes around on the outside of the cells.
Q. In order to do that it is necessary to go through the circle, is it not?
A. Yes, sir.
Q. How many rounds did Mr. Gibson make on the night of the lynching, before the mob arrived?
A. He didn't make any, as well as I remember. The chain was on the door, and he couldn't very easily get through there.

Q. Are you positive that he did not make any?
A. No, sir; I ain't positive. I say he couldn't make any, as I remember of.
457 Q. When the chain is on the door and he makes his rounds, what is necessary for him to do in order to get around?
A. When it is locked on there he has to have somebody come out of the cell and unlock the lock and take the chain off.
Q. How does the cell door get open?
A. They leave it unlocked.
Q. Do they leave it unlocked all night?
A. Yes, sir; that is the way they did when I was in there.
Q. Are not the cell doors inside the corridor locked up?
A. Yes, sir.
Q. Then they do not leave them unlocked, do they?
A. They leave the door unlocked; yes, sir. They did that night; all nights that the chain was on the door.
Q. When the chain is on the door they leave the cell door unlocked?
A. They left that floor boss's cell unlocked—cell No. 15.
Q. Mr. Roach was the floor boss?
A. Yes, sir.
Q. You and Roach were chums in the jail, were you not, Mr. Waller?
A. No, sir; not particularly.
Q. Well, you liked him better than the other prisoners, did you not?
A. Well, I liked him better than I did some of them,
458 and some of them I didn't.
Q. You and he were together a good deal while you were there; I mean off by yourselves—intimate together?
A. Not a great deal; no, sir.
Q. Did Roach have any trouble with the jailer during the time he was in jail there, do you know?
A. Not that I remember of.
Q. I will ask you if there was not some question that came up between Roach and the jailer in regard to the provisions for the jail?
A. Not that I remember of.
Q. Do you remember who the cook was at the time you were in jail?
A. No, sir; I never knew.
Q. Was he a nigger or a white man?
A. Why, a nigger always brought the provisions up to us.
Q. Was that nigger named Pres. Walker?
A. I don't know, sir.
Q. Was he a large yellow nigger?
A. I don't remember. There was two niggers there.
Q. Did you ever hear any conversation between Roach and the nigger cook there in regard to the provisions that were being furnished the prisoners?
A. No, sir; not that I remember of.
Q. You might have heard it and forgotten it?

A. I might have; yes, sir.

Q. I will ask you if you and Roach did not complain that
459 the negro prisoners there were getting better food than the white prisoners; and did you not say that more than once?

A. No, sir; I don't remember making any such complaint as that.

Q. Did you hear Roach make any complaint of that sort?

A. Not that I remember of.

Q. You would have remembered it if it had occurred, would you not?

A. No, sir. I might have remembered it.

Q. Did anything like that occur, with respect to the jailer giving better food to the nigger prisoners than to the white prisoners?

A. No, sir; nothing that I know of.

Q. Did you ever suspect anything of that sort?

A. No, sir.

Q. Did you ever hear any of the other inmates of your floor make any complaint of that sort?

A. Oh, I have heard them kick about the food several times. I never heard them complain that the niggers were getting more than the whites did.

Q. There was a kick up there in regard to the character of food that was being furnished the prisoners?

A. Amongst some of them; yes, sir.

Q. Did you and Roach feel that you were not getting what was due you?

A. Well, I didn't myself. I don't know how Roach was.

Q. Mr. Waller, did you talk with Roach in regard to this lynching after it occurred?

A. Roach talked to me about it.

Q. Frequently or not?

460 A. No, sir; not very frequently.

Q. How long did he remain in jail with you after this lynching?

A. I don't remember exactly. I was out on bond.

Q. Well, about how long was it?

A. I think that I got out in April some time. I couldn't say positively.

Q. Following the 19th of March?

A. Yes, sir.

Q. What time in April did you get out; do you remember?

A. No, sir; I don't remember.

Q. Was it the first part of the month or the last part?

A. Why, to the best of my knowledge and belief it was the latter part of April.

Q. How many conversations did you and Roach have in regard to this lynching before you were released from jail?

A. Well, I don't think I had any with Roach before I was released the first time.

Q. You stayed in there from the 19th of March until the latter part of April, and never talked to Roach about it at all?

A. Not that I remember of.
Q. Who did you talk to about it?
A. Me?
Q. Yes.
A. Why, there was general talk amongst all the prisoners.
Q. Did you talk to anybody about it?
461 A. No, sir.
Q. From the 19th of March until the latter part of April you did not mention to a living soul on your floor of the jail anything in regard to this lynching that had occurred on the 19th of March?
A. Not that I remember of.
Q. If you had, would you have remembered it?
A. I don't know, sir.
Q. You seem to remember the conversation that Captain Brown had. You could remember other conversations equally well, could you not, Mr. Waller?
A. Why, so far as talking to any one is concerned, about the matter, I don't think I held any conversation with any one about the matter at all.
Q. Did you mention the fact to any fellow-prisoner there that Ed Johnson had been lynched, during the period that you remained in jail after the lynching occurred?
A. I might have said that much; yes, sir.
Q. But if you did, you only mentioned the occurrence?
A. I didn't hold any conversation with any one about it.
Q. Your floor was full of prisoners after that, was it not?
A. I don't remember how many there was in there.
Q. About how many prisoners do you think were in there?
A. I haven't the least idea.
Q. Were there twenty?
A. I don't know, sir.
Q. Were there ten?
A. I don't know, sir.
462 Q. Twenty-five?
A. I haven't the least idea.
Q. You have no idea at all how many prisoners there were?
A. No, sir.
Q. Were there as many as two?
A. I haven't the least idea.
Q. As many as one?
A. Well, yes, sir; there was one.
Q. You were there?
A. I was there, and Roach.
Q. Was there anybody in jail with you from the 19th of March until the latter part of April?
A. Me and Roach is the only two I can remember.
Q. You remember of nobody being there except Roach?
A. No, sir; I can't remember.

Q. What was Roach in there for, Waller?
A. He was in there for maintaining money under false pretense.
Q. For "maintaining" money under false pretense?
A. Yes, sir.
Q. About how much did he "maintain;" do you remember?
A. Five dollars, I think.
Q. You remember nobody in the jail, on the floor with you, except Roach from the 19th of March until the latter part of April?
A. No, sir; I can't recall anyone. If the name was mentioned I might know.
463 Q. Was Roach in there all the time during that period?
A. Yes, sir.
Q. And you never held any conversation with him in regard to this lynching at all?
A. I might have mentioned it to him, but I never held any conversation with him.
Q. You are entirely positive that you never held any conversation with him in regard to the lynching, and you are equally positive that the only intimation that you made of it was that you mentioned it to him?
A. I mentioned it, I suppose. I don't remember.
Q. You are not positive about that, Mr. Waller?
A. I might have said that much.
Q. You may have and you may not?
A. Yes, sir; I can't remember.
Q. And if you did even mention it to him, you have forgotten it?
A. Yes, sir.
Q. You were together every day, were you not?
A. Yes, sir; we was in there together.
Q. Lynching is not such a common occurrence at the Hamilton County jail as not to be a subject of conversation, is it?
A. No, sir; I don't suppose it is.
Q. There was not but one lynching while you were in there?
A. No, sir. It was the general talk amongst the prisoners in there; but I never held any conversation with anyone.
464 Q. Were the prisoners being placed in jail and taken out every day while you were there?
A. No, sir; not every day.
Q. Well, every few days?
A. Every few days, I suppose.
Q. They would put them on your floor and take them out of your floor?
A. Yes, sir; the whites.
Q. Your floor was all whites, I believe?
A. Yes, sir.
Q. Then any conversation you had with Roach in regard to this lynching did not take over three or four words; it was just a casual mention of the occurrence?
A. Yes, sir. I don't remember of having any conversation.

Q. I know. If you did, though, it did not exceed four or five words?

A. No, sir.

Q. You are positive about that, are you, Mr. Waller?

A. Yes, sir; I am sure of it.

Q. Mr. Waller, on the night of the lynching was your cell door closed?

A. Yes, sir.

Q. Locked?

A. Yes, sir.

Q. I will ask you if the cell doors are not locked with a mechanical contrivance from the outside corridor.

A. They are shut that way.

465 Q. They are shut that way, and how are they locked?

A. Locked with a pad lock.

Q. Does the jailer come in and lock them after he shuts them?

A. He usually has a trusty to do that.

Q. What time were you placed in your cell on the night of the 19th of March of last year?

A. Between four and five o'clock, as well as I remember.

Q. About what time would you say, to be definite about it?

A. Well, I disremember whether it was four o'clock or five o'clock when they locked us up.

Q. Was it nearer four o'clock or nearer five o'clock?

A. I couldn't be definite either way.

Q. The days are comparatively short about the 19th of March, are they not?

A. Yes, sir.

Q. It gets dark how early, would you say?

A. I suppose it is dark by five o'clock.

Q. There were no windows near the circle to your floor there, were there?

A. You mean that I could look out?

Q. Yes; I mean near the circle.

A. No, sir; there wasn't any near the circle.

Q. I will ask you if the nearest window is not 20 feet away?

A. Well, I suppose it is that far.

Q. And the window is a small window?

466 A. I don't know what size it is.

Q. Well, it is a comparatively small window, is it not?

A. Yes, sir; I suppose so.

Q. It is just one that admits light on the circle?

A. That is all.

Q. I will ask you if, ordinarily, those window panes are not dingy?

A. Yes, sir.

Q. Whether they are not dirty?

A. Most all the time they are dingy.

Q. I will ask you, Mr. Waller, if it is not a fact that the boilers and engines that run the electric plant that supplies the light and

heat for the court-house and county bridge are not located immediately at the rear of the jail?

A. Yes, sir.

Q. They burn coal in their furnace?

A. Yes, sir; I suppose so.

Q. Soft coal?

A. I don't know, sir.

Q. Anyway, there is coal burned there?

A. There is coal burned there.

Q. I will ask you if it is not a fact that a great volume of smoke comes from that stack against the jail?

A. Yes, sir; at times.

Q. I will ask you further, Mr. Waller, if those boilers and engines are not fired up about five o'clock in the afternoon in order to start the machinery, at that time of the year?

467 A. Sometimes about five o'clock.

Q. Sometimes about five o'clock?

A. Yes, sir.

Q. And when they do fire that engine up, they fire it up with coal?

A. Yes, sir.

Q. And when they put fresh coal on the fire, is it not a fact that dense volumes of smoke come from it?

A. Yes, sir; lots of smoke.

Q. I will ask you if that stream of smoke from that boiler house does not continually come against the windows of the jail?

A. No, sir; it don't continually come there.

Q. Well, it does more or less?

A. It comes at times.

Q. It frequently comes?

A. Frequently comes; yes, sir.

Q. I will ask you if it is not a physical impossibility to keep the windows of the jail clean unless a man is scrubbing at them all the time, on account of that smoke?

A. Yes, sir; it is very nearly an impossibility.

Q. Mr. Waller, I will ask you if it is not a fact that the circle of the jail leading into your floor, on the 19th of March, it was not dark?

A. Was not dark?

Q. Yes; if it was not virtually dark?

A. You mean the circle was not dark?

Q. I mean whether or not it was light or dark at the circle?

468 A. Why, there was a light right in front of the circle out in the hall there.

Q. I know it is light ordinarily; but at five o'clock it is getting dusk on the 19th of March, is it not?

A. Yes, sir; I suppose so, if there hadn't been a light out there.

Q. Was there an electric light out there?

A. There was an electric light there: yes, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. You remember that distinctly?
A. Yes, sir.
Q. Whom did you first tell about this conversation that Captain Brown had there, Mr. Waller? You never mentioned it to Roach at all. Whom did you tell?
A. Why, Roach held the conversation with Captain Brown. It wasn't me.
Q. Whom did you tell that you heard it?
A. I don't remember telling anyone but Mr. Penland.
Q. Mr. Penland?
A. Yes, sir.
Q. The attorney-general?
A. Yes, sir.
Q. Where did you tell him that?
A. I told him at Petros.
Q. That is the Brushy Mountain branch of the Tennessee penitentiary?
A. Yes, sir; the Brushy Mountain branch.
Q. Did you make a statement to him at that time?
469 A. Yes, sir.
Q. A written or a verbal statement?
A. It was written. He wrote it.
Q. He wrote it down?
A. Yes, sir.
Q. What became of that statement?
A. Why, I had the copy of it. I left it up there.
Q. You left the copy of it?
A. Yes, sir.
Q. And you gave Mr. Penland a copy?
A. Yes, sir.
Mr. STANFIELD. Can we have that copy, Mr. Penland?
Mr. PENLAND. We will let you know. Go ahead with the witness.
Mr. STANFIELD. I would like to have that copy now, please sir.
Mr. SANFORD. No, I don't think we will give you the copy.
Mr. STANFIELD. All right.

By Mr. STANFIELD:

Q. Did you read that statement over after it was written down, Mr. Waller?
A. Yes, sir.
Q. Did you read it over carefully?
A. Yes, sir.
Q. How was it written; with a type machine, or a pencil, or a pen?
A. It was written with a pencil.
Q. By Mr. Penland?
470 A. Yes, sir.
Q. I will ask you if that is a copy of that statement [handing a paper to the witness].
A. Yes, sir; that is a copy of the statement, except this here [indicating].

Q. You need not read it. I just want to know if it is a copy.
A. Yes.
Q. You mean it is a copy with the exception of something that you point out there?
A. Yes, sir.
Mr. PENLAND. Let us see it, Mr. Stanfield, when you get through with it.
Mr. STANFIELD. All right.
Mr. CLIFT. You can't get it.
Mr. STANFIELD. I thought you had a copy.
Mr. PENLAND. You have introduced it and we have a right to see it.
Mr. STANFIELD. We have not introduced it.
Mr. SANFORD. General Penland thought you had introduced it.
Mr. PRITCHARD. No, sir.
Mr. CLIFT. Oh, no.
Mr. PENLAND. You asked for the copy from us, and I supposed you wanted to introduce it in evidence. If it is your private paper, we are not wanting it, sir.

By Mr. STANFIELD:

Q. Mr. Waller, with the exception of a statement here in re-
471 gard to Fitzsimmons, the copy is an exact copy of the statement you made?
A. There is another point in there that I don't exactly remember, about Captain Brown using profane language when he spoke of looking for the mob that night.
Q. Did Captain Brown use any profane language at that time, or did he not?
A. I don't remember. If he did I don't remember it.
Q. Did he use the word "damn?"
A. I don't remember.
Q. I will ask you, Mr. Waller, if Captain Brown was in the habit of swearing?
A. I never heard him swear.
Q. How long were you there under Captain Brown; how long were you in jail together?
A. I was put in jail on the first night of December, 1905. I stayed in there until April some time, and then I was out on bond.
Q. Captain Brown was the day jailer during all that period, was he?
A. Yes, sir.
Q. You saw him every day, frequently?
A. Yes, sir; I seen him frequently.
Q. I will ask you if, during all that time, you ever heard Captain Brown use any curse word of any character, or anything equivalent to a curse word?
A. Not that I remember of.
Q. You do not remember hearing him use any profane language of any kind, character, or description?

A. No, sir.

472 Q. Mr. Waller, do you remember the day of the week that this lynching occurred?

A. To the best of my knowledge it was on Monday.

Q. It was on Monday night, was it not?

A. As well as I remember, it was on Monday night.

Q. I will ask you whether there were few or many visitors at the jail the Sunday previous to that Monday?

A. Why, there was a good many.

Q. Do you know what they were there for?

A. I think for the purpose of seeing——

Mr. PENLAND. You need not state what you think.

The WITNESS. Well, I don't know, sir, positively what they were there for.

By Mr. STANFIELD:

Q. What do you think they were there for?

Mr. SANFORD. We object to that.

Mr. STANFIELD. I am cross-examining, if the court please.

Mr. PENLAND. You have no right to call for what he thinks. Ask him what he knows.

By Mr. STANFIELD:

Q. What is your best impression as to what they were there for?

Mr. SANFORD. I desire to note an objection to the evidence that may be offered, on the ground that it is incompetent and irrelevant.

The COMMISSIONER. The stenographer will note the objection.

By Mr. STANFIELD:

Q. Go ahead, Mr. Waller.

473 A. What I think they were there for?

Q. What is your best impression?

A. I think they were there to see Johnson baptized.

Q. Was he baptized?

A. Yes, sir; I suppose he was.

Q. By whom?

A. I don't know, sir.

Q. I will ask you whether or not there was a colored minister there who baptized him?

A. I don't know, sir.

Q. How was it on Monday, Mr. Waller, in regard to visitors being there?

A. As well as I remember, I don't remember any being there—any great number.

Q. There were some there?

A. Not that I remember of. I couldn't state positively whether there was any there.

Q. You say you do not remember of any great number being there?

A. I don't remember if there was any.

Q. I will ask you if it is not a fact that the colored minister came there and had services with Johnson on that evening?

A. Monday evening?

Q. Yes.

A. Not that I remember of.

Q. He was to be hanged on Tuesday, was he not?

A. I don't know, sir.

Q. Mr. Waller, did you not hear him singing and praying
474 up there?

A. I don't remember of hearing him singing and praying.

Q. You do not recall? Have you a good memory or a bad one?

A. I don't know, sir.

Q. Do you forget easily?

A. Well, I have forgot most of that case.

Q. You have forgotten most of the incidents of it?

A. Yes, sir. It has been a long time, and then I have had lots of trouble of my own. I haven't paid any attention to that.

Q. And you are not entirely positive about anything connected with this case, are you, Mr. Waller?

A. Very few things.

Q. And what you have sworn to is just your best impression?

A. Yes; the best impression that I can give.

Q. And whether anything occurred definitely you are not prepared to state; that is, your mind is in doubt about it? You are not positive about any proposition, and you are just swearing from your best impression about it; that is true, is it?

A. Well, there is one or two little incidents that I remember positively.

Q. Mr. Waller, at what point were you standing when this conversation occurred that you have detailed?

A. I was standing out about the middle of the corridor.

Q. About the middle of the corridor?

475 A. Yes.

Q. How long is that corridor from one end to the other?

A. I suppose it is thirty feet.

Q. And you were standing about the center?

A. Yes, sir; I mean the center between the cells.

Q. How thick is that circle that swings around there; how large is it in diameter?

A. I suppose it is two feet and a half, to the best of my knowledge.

Q. I will ask you, Mr. Waller, how close together the bars are that form that circle?

A. I suppose they are three to three and a half inches apart; maybe not so far.

Q. Say three inches apart; and they run all the way around just like a barrel?

A. Yes; they run all the way around with the circle.

Q. What is the size of those bars, Mr. Waller?

A. I suppose it is three-quarters of an inch.

Q. Three-quarters of an inch?

A. Yes, sir; maybe seven-eighths.

Q. And in order to put a prisoner in jail the circle must be swung around to where there is an opening in it, and the prisoner inserted in the circle, and then the circle turned?

A. Yes, sir.

Q. In other words, in looking through there you have got to look through two rows of those iron bars forming the circle?

A. Yes, sir.

476 Mr. PRITCHARD. I have here, Mr. Sanford, the record——

Mr. SANFORD. That is all right, sir.

Mr. PRITCHARD (continuing). From the State Circuit Court. I have the indictment against the witness. It is in this language:

"State of Tennessee, Hamilton County. Criminal Court, January term, 1906.

"The grand jurors for the State aforesaid, being duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the county aforesaid, upon their oaths present that Arthur Waller, heretofore, on the 1st day of December, 1905, in the county aforesaid, did unlawfully, feloniously"——

Mr. SANFORD. Is that the indictment?

Mr. PRITCHARD. Yes, sir.

Mr. SANFORD. Just tell us what the judgment was.

Mr. PRITCHARD. I want to read the indictment too. I want to put the indictment in. I want to show that he was indicted for murder.

Mr. SANFORD. I agree to that fact, if you will state that it is in there.

Mr. PRITCHARD. Well, I will produce a certified copy.

Mr. SANFORD. You do not need it. Go ahead and state it.

Mr. PRITCHARD. I thought, to save time, I would let the stenographer take the common law indictment.

The COMMISSIONER. It will save time if you will hand it to the stenographer and let him copy it in.

477 Mr. PRITCHARD. The clerk is here waiting to return it to the court, and for that reason I can not turn it over to the stenographer.

"State of Tennessee, Hamilton County. Criminal Court, January term, 1906.

"The grand jurors for the State aforesaid, being duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the county aforesaid, upon their oaths present that Arthur Waller, heretofore, on the 1st day of December, 1905, in the county aforesaid, did unlawfully, feloniously, wilfully, deliberately, premeditatedly, maliciously, and of his malice aforethought, kill and murder W. P. Fenlason, against the peace and dignity of the State. (Signed) M. N. Whitaker, attorney-general."

This is endorsed "A true bill," and signed by the foreman of the grand jury.

I have the criminal book of the court, showing the indictment found and recorded on the 29th day of January, 1906, and I have the record showing the conviction of the defendant Arthur Waller, the verdict being:

"The jurors, after having heard all the testimony and the charge of the court, do on their oaths say that the defendant is guilty of voluntary manslaughter, and fix his punishment at two years in the state penitentiary. It is therefore adjudged that the defendant be confined in the penitentiary for two years," &c.

By Mr. PRITCHARD:

Q. So you were convicted, Mr. Waller, of voluntary instead of involuntary manslaughter?

A. The way I understood it, it was involuntary.

478 Q. That is the way you understood it?

A. Yes, sir.

Q. You spoke of this fellow Roach being a floor boss. The prisoners selected their floor boss, did they not?

A. I don't know, sir, whether he was appointed by the sheriff or whether the prisoners selected him.

Q. You never heard of his being a trusty, or anything of that sort, as stated or asked about by Mr. Penland?

A. No, sir; he wasn't no trusty.

Q. He was not a trusty?

A. No, sir.

Q. The floor boss is one of the prisoners, whom the prisoners select to see that the floor is kept clean, is he not?

A. I don't know whether the prisoners selected him or not. He was floor boss when I went in there.

Q. Because the prisoners called him floor boss?

A. Yes, sir.

Q. Are you and this fellow Roach confined together in the state prison?

A. Now?

Q. Yes.

A. Yes, sir.

Q. How often do you see Roach?

A. Well, I see him about twice a day, I suppose.

Q. You have frequent conversations with him, do you not?

A. No, sir; I don't have any conversations with him.

Q. Haven't you had any conversations with him?

479 A. Well, I might have talked with him a little at times, but not frequently.

Q. Was it you or Roach that sent for Mr. Penland?

A. It was Roach.

Q. Roach sent for Mr. Penland?

A. Yes, sir.

Q. And was it you or Roach that remembered this conversation with Captain Brown, that you have told us about?

A. I remember it, and Roach remembers it, I suppose.

Q. Did Roach tell you about it several times since the alleged occurrence of it?

A. Not that I remember of.

Q. The conversation was with Roach and not with you?

A. No, sir. It was with Roach, but I heard it. He wasn't speaking to me; he was speaking to Roach.

Q. Roach is the man that is supposed to have had the conversation?

A. Roach is the man he was speaking to.

Q. Roach is the fellow that sent for Mr. Penland to give him information?

A. Yes, sir.

Q. Did Roach tell Mr. Penland about you or did Mr. Penland discover you without Roach's assistance?

A. Why, I think Roach called me in and introduced me to Mr. Penland.

Q. Roach is the man that called you in?

A. Yes, sir.

Q. Roach is the fellow, then, that has figured in this evidence that you are giving more than you have?

480 A. No, sir; I am just telling what I know about it.

Q. Roach is a flimflammer who was convicted for working confidence games; is he not?

A. He was indicted for maintaining money under false pretense.

Q. Well, he is an old confidence man, is he not?

A. I don't know, sir.

Q. You don't know?

A. No, sir; I don't.

Q. But Roach is the man that did the talking?

A. What talking is that?

Q. The talk you have told about, with Mr. Brown?

A. Roach was the man that Mr. Brown was speaking to at the time.

Q. Where was Roach?

A. Roach was standing at the circle door.

Q. Standing at the door?

A. Yes, sir.

Q. Where were you?

A. I was standing in the corridor.

Q. Roach, then, was the go-between that brought about the acquaintance between you and Mr. Penland, the prosecuting attorney?

A. Yes, sir.

Q. Why have they not got Roach; did they tell you?

A. No, sir.

Q. They did not tell you that Roach was such an unworthy and unbelievable fellow that they did not want to introduce him?

481 A. No, sir; they never mentioned his name in that way.

Q. And your memory was not refreshed by Roach upon the subject of this conversation?

A. Not with Jailer Brown; no, sir.

Q. Has he talked to you about it at any time since you have been in the penitentiary?

A. Why, when Mr. Penland came over there to see me and him, he spoke to me about the case.

Q. And Roach went over, in the presence of Mr. Penland, this supposed conversation with Mr. Brown before you recollected it; did he not?

A. No, sir.

Q. Did Roach repeat it or did you repeat it first to Mr. Penland?

A. Why, I repeated it first, I suppose. I don't remember.

Q. How much assistance did you get from Roach in the repetition of that conversation?

A. I didn't get any, as I remember.

Q. None at all? Roach did not help you out?

A. No, sir.

Q. Did Roach tell you he was going to send for Mr. Penland?

A. Yes, sir.

Q. He told you he was going to send for Mr. Penland?

A. Yes, sir.

Q. What did you and Roach expect to get out of it?

A. Well, I wasn't looking for anything myself. Roach was figuring on getting out.

482 Q. Roach was figuring on getting out?

A. Yes, sir.

Q. Did he say that Mr. Penland had promised to get him out if he would swear to this?

A. No, sir; he didn't make any statement of that kind.

Q. Did he try to get Mr. Penland to promise to let him out?

A. Not that I know of.

Q. Did Roach say he would testify if it would be of benefit to him?

A. I don't remember of him saying that.

Q. Did he profess willingness to swear almost anything Mr. Penland wanted if he could be gotten out?

A. Not that I remember.

Q. Did you expect to get out?

A. No, sir; never.

Q. How many conferences did you have with Mr. Penland?

A. Why, I spoke to him in Knoxville. I didn't hold any conversation with him.

Q. As you went on to prison?

A. Yes, sir.

Q. Did he have any conversation with you?

A. Not with me; no, sir.

Q. Did Mr. Penland tell you you had this conversation?

A. That I had it?

Q. Yes; with Mr. Brown; or that you had heard the conversation between Roach and Brown?

A. No, sir; Mr. Penland didn't.

Q. When did you next have a conversation with Mr. Pen-
483 land?

A. At Brushy Mountain, Petros. I think it was in April.

Q. In April last—of this year?

A. Yes, sir.

Q. Was that the time that Roach had sent for Mr. Penland?

A. No, sir. Roach sent for him at Knoxville.

Q. Before you got to the state prison?

A. Yes, sir.

Q. It was at the Knoxville jail that you first had a conference with him?

A. Yes, sir. That is where he and Roach had it. He never spoke to me very many times.

Q. That was while you and Roach were on the way to the state prison?

A. I don't remember whether we was waiting there for a decision or not.

Q. But Mr. Penland did not speak to you at that time at all?

A. Yes; he spoke to me.

Q. But he did not ask you about this conversation at all?

A. No, sir; he didn't ask me what I knew about the case.

Q. You did not tell him about the conversation at all?

A. No, sir.

Q. But you did tell him about it afterwards?

A. Yes, sir.

Q. Why did you not tell him about it the first time?

484 A. Well, he didn't ask me anything about it. He said he didn't have time.

Q. He didn't have time?

A. No, sir.

Q. But have not you and Roach gotten together at the state prison, after Roach had sent for Mr. Penland, and before you told him?

A. Roach sent for him before we sent to the state prison.

Q. Did you have an appointment with Mr. Penland at the state prison?

A. No, sir; I did not.

Q. Did Roach?

A. Not that I know of.

Q. Was Mr. Penland's visit to the state prison unexpected to you?

A. Yes, sir.

Q. How many times did he come to the state prison?

A. One time is all I know of.

Q. Did anybody else on behalf of the prosecution see you besides Mr. Penland?

A. No, sir; not that I know of.

Q. Did any agents or representatives of the Government see you?

A. No, sir.

Q. Did they investigate and search any more prisons and places of that sort to find witnesses that you know of?

A. No, sir; none that I know of.

Q. How was Roach going to get out if he testified in
485 this case?

A. I don't know, sir.

Q. Did he tell you?

A. No, sir.

Q. Did he tell you that they had promised him that if he would give favorable testimony he would be turned out, or they would use their influence to have him turned out?

A. No, sir. He told me that he was figuring on getting out if he possibly could.

Q. Did he tell you he thought that if he could give favorable testimony he would stand any chance to get out?

A. He didn't make that remark to me.

Q. But it was in connection with his testimony that he was figuring on getting out?

A. That was the idea, I think.

Q. That was Roach's idea?

A. Yes, sir.

Q. Was that your idea?

A. I didn't look to be benefited myself.

Q. It was after the conversation with Mr. Penland at Knoxville that he told you that?

A. That he told me he was figuring on getting out?

Q. Yes.

A. He told me that several times.

Q. Several times before and after?

A. Yes, sir.

Q. As soon as he got to Knoxville he sent for the district attorney to negotiate terms?

A. Why, he sent for him to come down.

486 Q. And Mr. Penland went?

A. I don't remember exactly when he came, but he came down.

Q. You and Roach are great friends, or at least friends. Was there any arrangement that Roach, by reason of any bad character or anything, was not to be introduced, and that you were to do the swearing to help Roach?

A. No, sir.

Q. You were not to swear for Roach's benefit?

A. No, sir; I am not swearing for Roach's benefit.

Q. And you expect nothing out of it yourself?

A. Not a thing.

Q. You understood, though, that Roach had been convicted of a crime that rendered him infamous, and that he could not testify, did you not?

A. Yes, sir; I knew that.

Q. And it was therefore important to Mr. Penland that he find somebody who would swear like Roach said, and who might be allowed to testify. You understood that?

A. No, sir; I didn't understand that.

Q. Well, you knew Roach would not be allowed to testify?

A. Roach couldn't testify; no.

Q. And you thought you could?

A. I could, but I didn't testify that Roach——

Q. I understand; I am not asking you about that. I asked you whether or not you understood that it was important for Mr. Penland to find somebody that could testify.

487 A. I understood you to say that he wanted to find somebody that could testify like Roach wanted to.

Q. Regardless of what I asked, I ask you now whether or not you understood that it was important for Mr. Penland to find somebody that would be a competent witness?

A. I don't know whether it was important or not, sir.

Q. Didn't you understand that from Mr. Penland and Mr. Roach?

A. No, sir; I don't know as I understood that I was a very important witness.

Q. So Roach had not refreshed your recollection about this conversation at all, according to your statement?

A. With Captain Brown?

Q. Yes.

A. No, sir.

Q. What was it Mr. Brown said?

A. Roach asked him if he was looking for the mob that night, and he said——

Q. What time of the day was that?

A. It was in the evening.

Q. What time in the evening?

A. Why, it was between four and five o'clock.

Q. Roach asked him if he was looking for the mob that night?

A. Yes, sir.

Q. And Mr. Brown said what?

A. He says, "I don't know; things look pretty warm," as well as I remember.

Q. What things were they that were looking warm?

A. I don't know, sir.

488 Q. Did you see anything that looked "warm?"

A. No, sir.

Q. Did you hear any noise?

A. No, sir.

Q. There was nobody kicking in the jail that day, you say?

A. Nobody that I remember of.

Q. What could Mr. Brown have referred to when he said that things looked warm?

A. I don't know, sir, what he had reference to.

Q. But he said things looked warm?

A. Yes, sir.

Q. Did you hear any noise, or notice any excitement or see any crowds or anything that looked "warm?"

A. No, sir; I couldn't see anything.

Q. You say that that was the same day that Johnson was lynched?

A. I don't remember whether it was the same day or the day before.

Q. The same day or the day before; you don't know what day it was. It may have been a couple of days before, may it not, Mr. Waller?

A. No, sir; it was either the day or the day before.

Q. But you do not know that it was the day that Johnson was lynched?

A. I wouldn't state positively; no, sir.

Q. But he said that things were looking pretty warm?

A. Yes, sir.

489 Q. On the day before Johnson was lynched, however, you are positive that there was nothing that looked warm, so far as you know?

A. So far as I seen I didn't see anything that looked warm.

Mr. PRITCHARD. So that the conversation must have occurred at some other time.

490 Mr. SHEPHERD. I have no desire to cross-examine.

Mr. PENLAND. Does anybody else want to ask him anything?

Mr. CHAMLEE. I do not want to ask anything.

Redirect examination by Mr. PENLAND:

Q. When Roach sent for me to come to the jail at Knoxville, state whether or not it was while he was awaiting there the action of the Supreme Court on his case?

A. I don't remember whether he was or not. To the best of my knowledge he was.

Q. It was, anyhow, while he was in jail at Knoxville?

A. Yes, sir.

Q. Do you know whether Roach sent for me or whether anybody else sent for me to go to the state prison at Petros?

A. No, sir; if anyone sent for you I do not know it.

Q. You did not know anything about it then until I went over there?

A. No, sir.

Q. Did you see Roach at all the day that you had a talk with me there in Colonel Nelson's office?

A. I seen him that day, but he was asleep at the time.

Q. State whether or not you had any conversation with him before you saw me and I had a conversation with him.

A. No, sir; I have never had any conversation with him.

Q. Where was it that you saw me there, Mr. Waller?

A. In Mr. Nelson's office.

491 Q. Who is Mr. Nelson?

A. He is the warden.

Q. Was Roach in there at the time that you made your statement, or about there, as far as you know?

A. No, sir; he was not in there or about there as I know of.

Q. Was Roach under a conviction from the state court or the federal court?

A. The state court.

Q. From Hamilton County?

A. Yes, sir.

Q. I will ask you to state, Mr. Waller, whether you stated a while ago—I think you did, but I am not certain about it—whether there were any colored prisoners on the floor in the jail that you were on.

A. No, sir; not at the time.

Q. Were there many white prisoners in the jail at the time, or a few?

A. I do not remember.

Q. Was there anybody else in your cell with you?

A. No, sir; not that I remember of.

Q. Nobody else that you remember of?

A. No, sir.

Mr. PENLAND. That is all.

Mr. PRITCHARD. I do not want him to stand aside for a minute. Let him remain on the stand for a minute. I think I may want to ask him another question. I will see in a minute.

492 Mr. SANFORD. Certainly.

Mr. PRITCHARD. (After a conference.) That is all.

Mr. SANFORD. Can Waller go back with the warden, to-day?

Mr. PRITCHARD. Yes, I think so.

THOMAS A. DOBBS, a witness produced on behalf of the Government, after being first duly sworn by the commisioner according to law, testified as follows:

By Mr. SANFORD:

Q. Where do you live?

A. Ridgedale.

Q. Is that a suburb of Chattanooga?

A. Yes, sir.

Q. How long have you been living there?

A. About seven years.

Q. What is your business?

A. I am a carpenter by trade.

Q. Do you know Mr. Stonecipher?

A. Yes, sir.

Q. Do you know the defendant, Henry Padgett?

A. Yes, sir.

Q. Do you know the defendant, William May?

A. Yes, sir.

Q. Do you remember the time of the Ed. Johnson lynching?

493 A. Yes, sir.

Q. Did you hear any conversation between the three persons I have referred to after that lynching? If so, state where it was, and what was said?

A. I heard a general conversation in front of Ransom's saloon.

Q. Where is that?

A. At Ninth and Market.

Q. When was that?

A. It was the 20th of March, I think, as well as I can remember.

Q. What day was that? The day of the lynching or the day after the lynching?

A. The day after.

Q. What time of da was it?

A. About nine o'clock, I think, as well as I can remember.

Q. Do you mean in the morning or evening?

A. In the morning.

Q. A general conversation, you mean, between these three parties you have spoken of?

A. Yes, sir.

Q. State what was said in that conversation.

A. I don't know as I paid much attention to it. I didn't hear all of it. I wasn't paying much attention. I heard Henry Padgett say they fixed that damn nigger last night. That is about the only thing I heard in regards to that.

494 Q. How close were you standing at that time?

A. About as close as from here to that desk [indicating].

Q. How far is that? Ten or twelve feet?

A. About eight feet, I guess.

Q. Did he state in reference to who had fixed him? Did he state who had fixed him?

A. No, sir; I don't know as he did. I wouldn't say.

Q. When you use the word "they" it is not clear whether you mean "they," speaking of themselves, or speaking of somebody else. That is what I mean. You are speaking in the third person, and I want to find out if you understood at the time, or if he stated at the time, who he meant.

A. As well as I understood, I think he said they fixed that nigger last night. That is the way I understood him.

Q. You know William May, you say?

A. Yes, sir.

Q. He was present at that time?

A. I think so; yes, sir. I wouldn't be positive whether he was there at that time or not.

Q. Did you notice anything peculiar in his appearance at that time?

A. No, sir; I couldn't say I did.

Q. What is your best recollection about it?

A. I couldn't say about that. I don't know.

Q. Did you at that time, or shortly after, notice anything peculiar about his appearance?

495 A. I remember his face being scratched up at a certain time. I wouldn't say when that was.

Q. What is your best recollection about it?

A. I couldn't say about that. I don't know exactly when.

Q. Was it before or after the lynching?

A. I don't know. It may have been before, and it may have been after.

Q. Have you any recollection about it?

A. No, sir.

Q. You have not?

A. No, sir.

Mr. SANFORD. You may cross-examine.

Mr. SHEPHERD. I do not desire to cross-examine. He only testifies as to my clients, I understand.

GEORGE B. DAVID, a witness produced on behalf of the Government, and after being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Do you live in Chattanooga?

A. Yes, sir.

Q. What is your profession or employment? What is your occupation?

A. I am advertising manager of the Times.

496 Q. What is your full name?

A. George B. David.

Q. You were living here, were you not, in March of last year?

A. Yes, sir.

Q. Did you have anything to do with the guarding of Ed Johnson at the time of the first excitement?

A. Yes, sir.

Q. What official position did you hold in reference to that matter?

A. I was a special deputy.

Q. Special deputy, what?

A. Sheriff.

Q. Special deputy sheriff?

A. Yes.

Q. Under Captain Shipp?

A. Yes, sir.

Q. Were there other special deputies at that time?

A. Yes, sir.

Q. Did you cease to be special deputy after that first excitement was over, or did your commission still continue?

A. My commission still continued.

Q. Do you remember the night of the lynching?

A. Yes, sir.

Q. Were you called upon to act in any way in defending Johnson that night?

A. No, sir.

497 Q. Did you hear that a lynching was going on, or had gone on, or did you hear anything about it that night?

A. I had not heard there would be a lynching.

Q. I ask, did you hear anything to take you up to the jail that night—anything during the night itself?

A. Well, I got to the jail after the mob had left the jail, and I met Captain Shipp and Chief Deputy Frauley standing outside of the jail gate on the sidewalk. I told Captain Shipp that I had heard the mob had the negro Ed Johnson, and asked whether that was so or not. He stated yes, and that they had him out at the bridge. That was the whole conversation.

Q. Did he seem excited or not excited at that time?

A. He was very quiet. He did not seem to be dejected. I didn't hardly notice his condition in reference to excitement, except that he was talking in an undertone to Frauley, and seemed to be quiet.

Q. Did he call on you to go and try to release him, or anything of that sort?

A. No, sir.

Q. Did you hear any shooting after that time?

A. As we started up the hill we heard—I don't know whether it was two, three, or five—shots up Walnut street.

Q. As who started?

A. A young man that was with me, and myself.

Q. In the direction of the bridge, you mean?

A. Yes, sir.

Q. Did the sheriff start with you?

498 A. No, sir.

Q. Did Frauley start with you?

A. No, sir.

Q. You and the young man with you started up towards the bridge, and heard the shots?

A. Yes, sir.

Cross-examination by Mr. PRITCHARD:

Q. What time was that?

A. Between half-past 10 and 11, I think.

Q. It was nearer 11 than half-past 10, was it not?

A. I am not positive as to the time.

Q. And Johnson had then been hung, or shot?

A. Well, I suppose so; because when I got to the bridge he was good and dead.

Q. You went right on to the bridge?

A. Yes, sir.

Q. The shooting you heard was probably the shots fired after the lynching by the returning lynchers?

A. I don't know.

JOHN NOLL, a witness produced on behalf of the Government, after being first duly sworn by the commissioner according to law, testified as follows:

499 By Mr. PENLAND:

Q. What is your full name?

A. John.

Q. John Noll?

A. Yes, sir.

Q. Where do you live?

A. I live in Hill City.

Q. What is your business?

A. Contractor.

Q. Do you remember the occasion of the lynching of Ed. Johnson, last March a year ago, in Chattanooga?

A. Yes, I remember it from the newspaper account of it.

Q. Were you here at that time?

A. Yes, sir.

Q. I will ask you to state whether or not you had a contract with the city at that time to do certain work on certain streets in Chattanooga?

A. I think I did.

Q. What streets were you working on, and what were you doing to them, Mr. Noll?

A. Well, I was grading them to get a foundation for a macadam that was known here as chert improvement.

Q. Chert?

A. Yes, sir.

Q. What streets were you at work on, if you can give the names of them?

500 A. My recollection is that I was at work at that time on Third street and on Lookout street—on the block on Lookout street between Third and Fourth, and on Third street east from Walnut street, between Walnut and Lookout.

Q. What is chert? Describe what it is, and the character of it, when it is put down.

A. Well, sir, it is broken rock formation peculiar to itself. It is not a granite, nor a limestone, nor a sandstone, nor a marble; but you find it in the hills here in places, where it has been crushed up by some means. Portions of it are powdered, and other portions will be in pieces larger than your two fists, and in sizes between.

Q. Is it used for macadam on streets?

A. Yes, sir.

Q. State whether or not you were putting that on the streets you have referred to—Lookout and Third streets.

A. Yes, sir; my recollection is that I was working at those places about that time.

Q. What is the relation of Third street to Lookout street?

A. The relation of Third street to Lookout street?

Q. Yes, sir. How are they situated, with reference to each other?

A. Third street crosses Lookout street. Lookout street runs north and south, or near there, and Third street would cross it, going east and west. There is one block between Walnut street and Lookout street.

Q. Lookout street runs from the jail to the county bridge, does it?

501 A. Lookout street runs from the jail to the county bridge? No, sir; I don't think so.

The COMMISSIONER. Walnut street.

By Mr. PENLAND:

Q. Walnut street, I meant to say.

A. Yes, sir; Walnut street does.

Q. Lookout street is parallel to Walnut street, is it?

A. Yes, sir; and one block east.

Q. State whether or not the chert, and material that you were putting on Third street, came up to Walnut street.

A. My recollection is that the asphalt macadam on Walnut street had been extended out on the connection as far as the property line, or as far as what would be parallel with the property line.

Q. The sidewalk extended—a line——

A. (Interrupting.) A line extended from the east side of the sidewalk would be as far west as I would come with the chert macadam.

Q. That would be the fence line. That is what you mean by the property line?

A. Yes, sir; the property line or the fence line.

Q. State whether or not, on Third street, coming up to Walnut street, at the time Ed. Johnson was lynched, there was an amount of this chert on that street—about the 19th of March I believe the record shows.

A. I think there was, perhaps. I am not positive about that now.

Q. When that is first put down, state whether or not when it
502 is wet it is like dirt or clay that will stick to the feet.

Yes, sir; it will.

Q. How about Walnut street? Is there any of that chert on Walnut street between the jail and the bridge?

A. Yes, sir; two blocks of it.

Q. What blocks? Between what streets?

A. Between Fourth and Fifth and Fifth and Sixth.

Q. Was this chert there on Walnut street at the time Johnson was lynched?

A. Yes, sir.

Q. Lookout street, I believe you say, runs parallel with Walnut street?

A. Yes, sir.

Q. And does not cross it as Third street does?

A. No, sir.

Q. State whether or not the macadam or the paved street there where Third street crosses it, is broken; whether or not that is a solid street there, or whether there are breaks in it?

A. At the intersection of Third and Walnut?

Q. Yes, sir.

A. Yes, sir; it was not in good repair at the time I built the street there, and it is worse now than it was then.

Q. State whether or not, from the condition it was in there, this chert that you were putting on Third street would fall into those holes or breaks in the pavement?

A. It might have done it. I don't know that it did.

503 Q. Did you haul the chert across Walnut street onto Third street in delivering it?

A. I probably hauled a portion of it up Walnut street and then turned out.

Q. Turned out across the walk there to Third street?

A. Yes, sir.

Cross-examination by Mr. SHEPHERD:

Q. Mr. Noll, who was the contractor that did the work on the street between Fourth and Sixth streets?

A. On what street?

Q. On Walnut street between Sixth and Fourth. Who put that chert down there?

A. I think perhaps the city did that themselves, several years ago.

Q. When the chert stands a length of time like that it becomes hard, does it not?

A. Yes, sir. It hardens by use, and when a contractor puts it down he has to roll it until it becomes hard; and the city does the same thing.

Q. After it has been rolled and has stood for a length of time it gets so hard that there is no danger of mud clinging to one's feet from passing over it, is there?

A. No, sir; not when it has not been disturbed.

Q. The street between Sixth and Fourth crosses over a hill, does it not?

A. Yes, sir.

504 Q. The slope of the hill is from about Fifth street toward the river to Fourth street, and then from Fifth street towards Sixth, this way, is it not?

A. I think Fifth street is about the dividing line of the slope, north and south.

Q. It is about at the center. It is quite a steep grade over there?

A. Yes, sir.

Q. State whether or not the street along there would get muddy if it was paved with chert, even though it had rained considerably.

A. No, sir; it could be kept in shape so that it would not get muddy, but frequently, in digging across for laying water service

pipes or gas pipes, it gets depressions in it that will fill up with this powdered chert, and soon after we had graded, if a man went along there he could get in the mud there.

Q. You do not know that any such disturbances as that had occurred on Walnut street?

A. No, sir; I do not.

Q. The city ordinance requires that when a city water pipe is put across there the man who puts it in shall restore the chert and pack it in again?

A. I couldn't tell you what the city ordinance requires.

Q. If there was any chert that fell in Walnut street at all at Third street, it was merely an accident—some small quantities,
505 in driving the wagons over, might have fallen on the sidewalk of Walnut street at Third?

A. Where I was hauling in?

Q. Yes, sir.

A. That is all that could have been there; yes, sir.

Q. When did you finish that Third street work, Mr. Noll?

A. I don't remember the exact date. It may have been the first of April, and maybe later—it may have been the first of May.

Q. Was it as late as July?

A. I may have done a little work on it in July, because I did go over that. I had finished it, or supposed I had finished it, and then some two or three months later Mr. Hooke required me to put a small amount on in places, to bring the surface up to an exact grade.

Q. Do you have a distinct recollection that you had done or were doing any work on Third street at the time this lynching occurred?

A. I have this distinct recollection; that I took that contract early in the winter and that that was the first street I put chert on. I do not remember that I had finished it, nor I do not remember at that exact time just the condition the work was in; but I am satisfied that I had put chert there at that time and was working at the same time on one block of Lookout street, between Third and Fourth. I was continuing around up that way.

Mr. SHEPHERD. That will do, sir.

Mr. SANFORD. Those are all our witnesses for to-day.
506 I will ask for an adjournment until to-morrow morning. We hope to have three more witnesses to-morrow, and that will be all we expect now to have.

Mr. SHEPHERD. We are planning, Mr. Attorney-General, to have a few witnesses for the defense here to-morrow.

Mr. SANFORD. I think it would be well to summon them.

The COMMISSIONER. We will stand adjourned until to-morrow morning at 10 o'clock.

(Thereupon, at 12.20 p. m., the hearing was adjourned until Thursday, June 13, 1907, at 10 o'clock a. m.)

507 CHATTANOOGA, TENNESSEE, *June 13, 1907.*

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland, and counsel for the various defendants.

The COMMISSIONER. The hearing in the case of the United States vs. Shipp and others will be resumed.

Mr. SANFORD. The Government has, so far as I know, only one witness. He is not here. He is on the way here and will get here to-night.

In addition to that there was a stipulation which, you will remember, was agreed to in open court before, and prepared to be signed; and I understand has been signed by the attorneys for the defendants. That may just be filed. Mr. Pritchard tells me that he has signed it, and I think Judge Shepherd has signed it, and everybody, as to purely formal matters that we agreed to.

With that understanding the Government will be ready to rest just as soon as this other witness comes. He will not be here, though, until to-night. We are perfectly willing to have the defense start to-day, if it so desires, with the understanding that we may introduce this witness when he comes; or to let it go over until to-morrow, just as the defendants prefer.

Mr. SHEPHERD. Would you object to telling us who that
508 witness is?

Mr. SANFORD. No; it is Joe Franklin. He used to be a constable here.

Mr. SHEPHERD. A negro constable?

Mr. SANFORD. Yes. I am informed that he is on the way here.

The COMMISSIONER. What is your pleasure, gentlemen?

Mr. STANFIELD. You say he will not be here until to-night?

Mr. SANFORD. He will not be here until to-morrow morning; but I do not know what train he will come in on.

Mr. SHEPHERD. I think it is the consensus of opinion of the attorneys on this side that we should adjourn now, let you examine Franklin, and then take up our witnesses.

Mr. SANFORD. You mean to adjourn until 10 o'clock to-morrow morning?

Mr. SHEPHERD. Yes, sir; and we will endeavor to have some of the witnesses for the defense here, so that we will go straight along.

The COMMISSIONER. We will stand adjourned until to-morrow morning at 10 o'clock.

(Thereupon, at 10.10 a. m., the hearing was adjourned until Friday, June 14, 1907, at 10 o'clock a. m.)

509 CHATTANOOGA, TENNESSEE, *June 14, 1907.*

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland, and counsel for the various defendants.

JOE FRANKLIN (colored), a witness produced on behalf of the Government, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Is your name Joe Franklin?

A. Yes, sir.

Mr. SHEPHERD. There may be a number of witnesses in the court room that you want to retire.

Mr. SANFORD. The marshal had better announce that all persons summoned as witnesses must leave the room.

The COMMISSIONER. The marshal will announce that all persons summoned as witnesses must leave the room.

Mr. PENLAND. And all who know they are going to be witnesses.

(All witnesses were thereupon excluded from the room.)

By Mr. SANFORD:

Q. Did you ever live in Chattanooga, Franklin?

A. Yes, sir.

Q. How long have you been living here?

A. I have been living here ever since 1883.

510 Q. Since 1883?

A. Yes, sir.

Q. Does your family live here now?

A. Yes, sir.

Q. Have you been away recently?

A. Yes, sir; I have.

Q. Did you ever serve in any public capacity here; in any office?

A. I did; I served as constable here.

Q. How many times did you serve as constable?

A. I served three successful terms.

Q. Were you here in the spring of last year, 1906, at the time of the Ed Johnson lynching?

A. Yes, sir; I was.

Q. What position did you occupy at that time?

A. I was constable at that time.

Q. Did your duties as constable take you around the jail frequently?

A. Very often; yes, sir.

Q. Did they ever take you around there at night?

A. Yes, sir; very often.

Q. Before this trouble came up, the excitement about Ed Johnson and the first attempt at lynching him, what was the habit or the custom of the deputies as to whether or not they would usually be at the jail at night?

A. Well, after Captain Shipp put guards around the jail they were there pretty often. They were there about every night.

511 Q. I mean before the guards were put around the jail; before any excitement came up over Ed Johnson or Westfield, or any other lynching trouble, would they usually be there or not—the regular deputies?

A. Oh, the regular deputies; sometimes you would find one or two there at night for a while, and sometimes you would find nobody there but Mr. Gibson.

Q. What would be the usual thing?

A. The usual way was just Mr. Gibson and a floor man, a colored man there, a trusty. Mr. Frawley would be there perhaps from after supper time till 10 or 11 o'clock.

Q. Who was Mr. Frawley?

A. He was the clerk—I suppose he was. He was the officer there.

Q. Was he a deputy?

A. A deputy; yes, sir.

Q. Who had charge there when Captain Shipp was not there?

A. Mr. Frawley.

Q. He was the head deputy?

A. Yes, sir.

Q. And you say he would usually be there?

A. He would usually be there, only at supper time. He would go to supper about 8 o'clock or perhaps a little before.

Q. When would he come back?

A. He would generally get back as early as possible. I don't know exactly what time, but he would generally be there after 8.

512 Q. After the excitement over Ed Johnson came up, the first attempt to lynch him, the trial and all that, were there any guards at the jail, or would the deputies generally be there?

A. When the thing got so hot, Captain Shipp put several guards around the jail.

Q. What about the deputies?

A. The deputies was the ones he put there.

Q. How many would be there at night, as a rule, after that came up?

A. Well, several. One night I went up there myself, and I believe I counted ten or twelve. I know I counted ten anyway.

Q. How many would generally be there at night?

A. That was generally the rule—from 8 to 10, somewheres along there. They would keep a crowd with guns so as to protect the jail.

Q. Did you go up there at all on the afternoon or evening before Ed Johnson was lynched?

A. I was there twice—three times that day in the morning, and I was there once that afternoon when Captain Brown was moving the prisoners. Then I was there twice that night, once between 6 and 7, and once, as near as I can come at it, between 8 and 9.

Q. What do you mean about Captain Brown moving the prisoners? Tell us about that.

A. Well, I went in, and I had a prisoner to put in jail. There was a deputy on the floor. Captain Shipp wasn't there as I could see. There was a young deputy on the floor, and I asked him where
513 was the jailer, the keeper, and he says——

Mr. PRITCHARD. Never mind what he said.

By Mr. SANFORD:

Q. Not unless you know it yourself.

A. Well, I know he was up there moving the prisoners.

Q. Did you see him?

A. I saw Captain Brown.

Q. Do you know from what floor and to what floor he was moving them?

A. I saw him go up the stairs with Ed. Johnson. That was in the afternoon.

Q. About what time in the afternoon was that?

A. I disremember.

Q. When were you there again, Joe?

A. I was there after that about 7 o'clock, as near as I can come to it.

Q. What were you doing there?

A. I was taking a prisoner.

Q. Did you find anybody there beside Mr. Gibson?

A. No, sir; I don't believe there was. Charlie Mason was there, the trusty.

Q. He was the trusty?

A. Yes, sir.

Q. Was he white or colored?

A. Colored.

Q. You took a prisoner there?

A. Yes, sir.

Q. Do you know the jail door that is between the office and the jail part?

514 A. Yes, sir.

Q. At that time of the night it is generally open or locked?

A. Locked.

Q. How was it that night, at that time?

A. It was unlocked.

Q. Did you go back again later that night?

A. I did.

Q. Before the lynching?

A. Yes, sir.

Q. What time did you go back?

A. Just as I stated before, as near as I can come at it, it must have been between 7 and 8, or between 8 and 9, somewheres along there—between 8 and 9. It was the early part of the night.

Q. How did you happen to go back again?

A. I assisted Bradford in carrying a man back that time, because he had a very tough man and he couldn't get along with him.

Q. You were back in the prison then?
A. Yes, sir.
Q. Who was Bradford?
A. He was a colored deputy sheriff, special deputy.
Q. In what shape did you find this jail door then?
A. It was open; it was wide open then.
Q. Did you find anybody there besides Mr. Gibson?
A. No. There was nobody in the office and there was nobody in the lobby, and I ring the gong at the door and Mr. Gibson
515 came up from downstairs. I says: "I have got another man." He says: "All right." I says: "Your door is open." He says: "Well, the prisoners are all locked up anyway." I says: "Ain't you afraid of the danger in leaving the door open that way?" He says: "No." I says: "Where is the guards?" "Well," he says, "he dismissed all the guards."
Q. Who dismissed them?
A. He said Captain Shipp had dismissed them, because there wouldn't be any more danger. He was a United States prisoner now and there wouldn't be any more danger.
Mr. PRITCHARD. Of course you understand that we are objecting to that on behalf of Captain Shipp.
Mr. SANFORD. I can not understand unless you object to it. If you do, then I will understand it.
Mr. PRITCHARD. Let the gentleman understand, then, that we object. I supposed he would know it without my suggesting it; but I suppose it is brought against the defendant, Gibson, and I want to have it understood.
The COMMISSIONER. The objection will be noted.

By Mr. SANFORD:

Q. How long did you stay there?
A. I stayed there long enough to weigh him up, put him in the circle and pull the lever and let him in—let him go in the cell.
Q. Did you go away then?
A. Yes, sir.
Q. Did you go back in the neighborhood of the jail or the courthouse later in the evening?
A. You mean that night?
Q. Yes.
516 A. I did.
Q. About what time did you go back?
A. Well, it was a very short while afterwards. I was standing on the corner of 9th and Market, myself and Constable Bill Allen, talking with Dr. Thompson and Lewis Gibbs. Charlie Mason came running down the street from around the corner, and he said——
Mr. PRITCHARD. Hold on. I object to what he said.

By Mr. SANFORD:

Q. I do not ask you what Mason said. I will ask you if you heard there was a lynching going on?

A. I heard there was a lynching going on.

Mr. PRITCHARD. I object to what he heard. If it is incompetent to state the substance of the conversation he has no right to state the details of it.

By Mr. SANFORD:

Q. Did you go up to the jail then?

A. I went up to the jail.

Q. Or the neighborhood of the jail?

A. I went up to the neighborhood of the jail; I went inside of the court-house line. When I got up there myself, Bill Allen and these two colored men walked inside of the yard of the court-house. I says to Mr. Allen——

Mr. PRITCHARD. I object to what he said to Mr. Allen as incompetent.

By Mr. SANFORD:

Q. I do not ask you to state what anybody said to you unless he is one of the defendants here.

517 A. He was constable at that time, the reason I said that. But, anyhow, they were lamming on the jail upstairs—I took it to be upstairs.

Q. How could you tell?

A. I could hear the knocking.

Q. Were there any people around there?

A. There was a good many in there, lined up on the front walk where it goes up to the front door of the jail lobby. Then there was a good many standing on the right and left side of the gate on Walnut street—on either side of the gate. There looked to be about ten or fifteen on each side. And inside the gate it was crowded like that [indicating] on up to the door. On the inside of the lobby there didn't look to be more than about five or six men. I could stand and look right in the jail door. But a pretty good crowd was on the upper floors and on the stairway. I saw them when they come down, and when I heard the man say——

Mr. PRITCHARD. I object to what he heard a man say.

By Mr. SANFORD:

Q. The crowd was going out then?

A. Yes; bringing him down.

Q. You can tell what you heard a man say in that crowd.

A. I heard a man say: "By God, we have got him, boys; clear the way out!" Then they rushed right down.

Q. Was that a voice that was familiar to you or not?

A. Yes, sir; it was.

Q. Whose voice was it?

A. It was the voice of Bart Justice.

Q. How long had you known Bart Justice?

518 A. I have known him for several years. I worked in the iron works with him several years ago.

Q. Then what did you do?

A. When the crowd come down to the lobby I walked towards the northwest gate of the court-house—walked right along on the line of the house.

Q. What gate did you say?

A. The northwest gate, on Walnut street—Walnut and 6th street. I walked to that gate and sat down inside of the gate, on the second step from the top, and saw the crowd as they passed right by and went up the hill.

Q. Was there any light there or was it dark?

A. There was an electric light right in the center of that street, near the intersection of both streets.

Q. Did you recognize anybody as they passed?

A. I did.

Q. How much of a crowd was it that had Ed Johnson; how many of the lynchers were there?

A. The first crowd that passed looked to be about 30 or 40. Then there was a little bunch behind that, and a little bunch behind that.

Q. Did you see the bunch that had Ed Johnson?

A. I did.

Q. How many were there in that bunch?

A. There looked to be about 25 in that bunch.

Q. You think there were about 25?

A. Yes.

Q. Did you recognize anybody in the bunch that had Ed Johnson?

A. I did.

519 Q. Whom did you recognize in that bunch?

A. I recognized Bart Justice in that bunch.

Q. What was he doing?

A. He had him by his arm or by his clothes, I couldn't swear which, whether by his arm or by his clothes. There was another man walking right along on the other side.

Q. Which side was Mr. Justice on?

A. He was on the side next to me.

Q. Would that be on Ed Johnson's right or left?

A. On his right. He said just before he got opposite where I was sitting——

Q. Said to whom?

A. Justice said to Johnson: he said, "By God, you might as well own it; by God, we have got you, and if you own it we will be easy on you." Johnson says: "I didn't do it; I didn't do it; I didn't do it." He said that three times.

Q. Where was that said?

A. When they was walking right along the street going towards the hill. If they had have looked around they could have sawed me; but you see I was on the right side of him, and everybody was making for the bridge; making that way.

Q. And they were passing you?

A. Passing me.

Q. That corner is on the opposite side of Walnut street from the jail, is it?

A. Yes, sir.

Q. Across the street, a little further toward the bridge?

520 A. Yes, sir.

Q. On the right-hand side as you go to the bridge?

A. Yes, sir.

Q. Did you recognize anybody else in this bunch that had Ed Johnson?

A. I didn't recognize any other man who had hold of him.

Q. You said that. Did you recognize anybody else in the bunch?

A. I recognized several young men in that bunch, walking along.

Q. Whom did you recognize?

A. I recognized a young man who used to be with the money loaners' association, by the name of Peyton. I recognized a young man that runs a business down here on 8th street, Mr. Marquette.

Q. What is his first name?

A. I don't know his first name.

Q. What business was he in at that time?

A. He was in the clothing business, cleaning clothes business, or something like that.

Q. Did you ever hear his first name?

A. Yes, sir; I have heard it.

Q. Was it John?

A. I don't think it was.

Q. Anyway, it was Mr. Marquette that was in that business?

A. I knowed him anyway. He didn't have on any mask.

Q. Did Justice have on any mask?

521 A. He had a little mask right across there [indicating].

Q. What kind of a thing was it?

A. It looked like a handkerchief tied across his face, or a rag.

Q. You say "right across there." Put that in words. Where was it?

A. Right across his face. This is his face right here [indicating].

Q. You mean right over the top of his nose and about at his eyes?

A. Yes, sir; right about there.

Q. How could you recognize him?

A. Oh, I know him well, just like I know my father. I would know him with his back to me. I would know him by his walk; I would know him by his talk.

Q. Is he a large or a small man?

A. He is a large man.

Q. Did you recognize him slightly or distinctly?

A. I recognized him distinctly.

Q. Who else did you see in that bunch that had Ed Johnson?

A. I saw in the bunch several young fellows. I saw Nick Nolan.

Q. How long had you known Nick Nolan?

A. Well, quite a while.

Q. What business was he engaged in?

A. The saloon business.

Q. Where was he with reference to Ed Johnson?

522 A. Why, he was just walking along in the crowd. He wasn't doing anything. There was several of them I knew walking along in the crowd.

Q. Did you know the deputy sheriffs at that time?

A. I knew all of them.

Q. Did you see any of the deputy sheriffs in the crowd?

A. I saw one I knew.

Q. Who was he?

A. Joe Clark.

Q. Where was he?

A. He was in the first bunch.

Q. What was he doing?

A. He either had a shotgun or had a stick, I don't know which, in his hand.

Q. Did you see anybody there who had been a deputy sheriff before, that you knew?

A. Yes, sir.

Q. Who was that?

A. I saw Johnnie Jones.

Mr. COOKE. Who was that, Mr. Sanford?

Mr. SANFORD. Johnnie Jones, who had been deputy sheriff.

By Mr. SANFORD:

Q. What was Jones doing?

A. He was walking along in the crowd.

Q. Which bunch was he in?

A. He was in the first crowd.

Q. Was that the crowd that had Ed Johnson or not?

523 A. That was the crowd that had Ed Johnson.

Q. That was the first bunch?

A. That was the crowd that was with the crowd that had Johnson. There was only two men that had Ed Johnson.

Q. When you speak of the first crowd you mean the crowd that was around the men that had Ed Johnson?

A. Yes, sir.

Q. And when you speak of the men that had him, you mean the two men that had hold of him?

A. Yes, sir.

Q. And the other men were right around?

A. Yes, sir.

Q. Which way was this crowd of men going?

A. Going north on Walnut street.

Q. Towards the river—towards the bridge?

A. Towards the bridge.

Q. Do you know what time of the night it was then?

A. Well, it was between 9 and 10 o'clock; somewheres along there.

Cross-examination by Mr. PRITCHARD:

Q. You say you recognized Johnnie Jones?
A. Yes, sir.
Q. A man who had been a deputy?
A. Yes, sir.
Q. What sort of a looking man is Johnnie Jones?
A. He was a little slim man.
Q. Where does he live?
524 A. He lives in the 5th ward.
Q. How old a looking man is he?
A. He looks to be about 28 or 30 years old.
Q. What color are his hair and eyes?
A. His eyes is blue. I don't know now what color his—I worked with him several days, but I disremember now what his hair is.
Q. Is it red hair or black hair?
A. I don't know.
Q. You do not know whether it is red or black?
A. No.
Q. It was some man by the name of Johnnie Jones?
A. Yes, sir.
Q. Who has blue eyes; and about how much would you say he would weigh?
A. About 150.
Q. About how tall a man is he?
A. About 5 feet 3, or something like that.
Q. About what color were his clothes; dark or light?
A. When the mob went by that night I couldn't tell about the clothes. Nearly all the mob had light overcoats.
Q. I asked you about Johnnie Jones.
A. I couldn't tell about him.
Q. He had on a light overcoat?
A. Yes, sir.
Q. That is about as much as you remember?
A. Yes, sir.
Q. Nearly all of them had light overcoats?
A. Yes, sir.
525 Q. Was that a uniform or disguise they had on, or did it simply happen that way?
A. It might have been a disguise; I don't know.
Q. Was there anybody in the mob that did not have on a light overcoat?
A. There was several in the mob that didn't have on any.
Q. But the great majority had on light overcoats?
A. No, the great majority didn't have.
Q. Didn't you swear a while ago that most of them had them on?
A. Most of the men that participated in the mob.
Q. Did most of them have on light overcoats or not?
A. Yes, sir.

Q. Then why do you swear that they did not?

A. The biggest crowd that come behind didn't have on light overcoats.

Q. I am speaking of the crowd that had Ed Johnson. How many were in that crowd?

A. There looked to be about 25 or 30.

Q. Now, the majority of those, or most of them, you say had on light overcoats. About how many of them had on light overcoats?

A. I didn't count them.

Q. Did as many as 20 have on light overcoats?

A. I expect there was. I didn't count them.

Q. This man was 5 feet 3 inches high, as near as you can come to it?

A. Yes.

526 Q. He weighed about 150 pounds and was about 28 years of age; he had either black hair or red hair, you do not know which; he had blue eyes, and had on a light overcoat?

A. Yes, sir.

Q. Could you tell that night whether his eyes were blue?

A. No, sir.

Q. You could not tell?

A. No, sir.

Q. How did you identify him as Johnnie Jones?

A I knew him because he had on no mask.

Q. Did you see his face?

A. Yes, sir.

Q. Did he have a beard?

A. He had a moustache.

Q. Then this man had either black or red hair; he had blue eyes, which you could not tell at night; he had a moustache, had on no mask, and had on a light overcoat. Were there any other points by which you could identify him as Johnnie Jones?

A. No, sir; only I just knew him.

Q. Don't you know now that Sheriff Shipp never did have a deputy by the name of Johnnie Jones?

A. I know he did.

Q. He did have a deputy by that name?

A. Yes, sir.

Q. When did he have such a deputy?

A. Last year.

Q. Last year he had a deputy by the name of Johnnie

527 Jones, and he was this man that you speak of?

A. Either him or somebody else.

Q. Never mind about somebody else. I am asking you if he did have a deputy named Johnnie Jones?

A. He had a man by the name of Johnnie Jones.

Q. As a deputy?

A. As a deputy.

Q. How long had he been a deputy?

A. I don't know that.

Q. About how long? How long had you known of his being a deputy?

A. Six or eight months.

Q. Did you see him exercising the office of deputy—working as a deputy?

A. Yes, sir.

Q. You saw him exercising that office and you saw him around the jail as a deputy?

A. Yes, sir.

Q. And you saw him doing other service as a deputy?

A. Yes, sir.

Q. This man Johnnie Jones?

A. Yes, sir.

Q. And you know the man?

A. Yes, sir.

Q. Who told you that there was a defendant in this case by the name of Johnnie Jones?

A. Nobody.

Q. Did any officer or any representative of the Government
528 tell you that there was any defendant in this case by the name of Johnnie Jones?

A. No, sir.

Q. Who told you or caused you to suspect or believe that Sheriff Shipp ever had a deputy by the name of Johnnie Jones?

A. Why, I know Johnnie Jones.

Q. You know him well, and know him to have been a deputy?

A. That is what I call him. That is what he goes by. I don't know what Captain Shipp got his name at.

Q. What do you say?

A. I say that is what he was called before me; that is what he was introduced to me. I don't know what Captain Shipp got his name at, but I know his name is Johnnie Jones.

Q. And you know he had such a deputy?

A. Yes, sir.

Q. You personally knew that?

A. Yes, sir; because he and I have had crap games together and have arrested people together. I know his name is Johnnie Jones to my knowledge.

Q. And that is the man you saw that night, a man that had been a deputy under Sheriff Shipp?

A. Yes, sir.

Q. A man you knew as Johnnie Jones?

A. Yes, sir.

Q. He is the man that you saw that night?

A. Yes, sir.

Q. And the man that you identified?

A. Yes, sir.

529 Q. You spoke of Mr. Clark also a while ago. You say he was a deputy at that time?

A. Yes, sir.
Q. Do you know that fact?
A. I know it.
Q. How do you know that fact?
A. I know it by him wearing a badge and having a pistol on.
Q. He was a regular deputy at that time?
A. Yes, sir.
Q. Had been and was?
A. Yes, sir.
Q. And you saw him?
A. I saw him.
Q. Where was he?
A. He was in the first crowd.
Q. He was a deputy sheriff at that time?
A. He was.
Q. Where were you standing when that crowd passed?
A. I was sitting.
Q. Where were you sitting?
A. In the northwest gate of the court-house.
Q. In the northwest gate of the court-house?
A. Yes, sir; the court-house yard.
Q. Do you mean the gate that fronts toward the west?
A. No, sir; it fronted the corner.
Q. It is at the corner?
A. Yes, sir.
530 Q. You were in the corner where the steps go down, at the northwest corner of the yard?
A. Yes, sir.
Q. You were sitting there?
A. Yes, sir.
Q. How close were you to that telephone post that stands in the corner?
A. I never measured that.
Q. About how far?
A. I couldn't tell you.
Q. You were the width of the sidewalk from it?
A. I was the width of the sidewalk from it, I know.
Q. Any more than that?
A. I was sitting on the steps.
Q. Who was with you?
A. Nobody.
Q. Was there anybody there?
A. There was nobody on the steps with me.
Q. Was there anybody there with you or around you?
A. Mr. Allen was there.
Q. Who?
A. Mr. Allen, that you refused to let me tell about a while ago.
Q. Tell me who was there?
A. Allen was in the yard.

Q. What Allen?

A. William Allen.

Q. Who was between you, where you were seated near the sidewalk or at the curbstone, and that post?

A. Nobody was between me.

531 Q. Was there anybody there that could have obstructed your view?

A. No, sir.

Q. Was there anybody behind the post?

A. None except those men that passed by the post.

Q. Were there not two men standing right behind the post?

A. If there was I didn't see them.

Q. You were there where you were bound to see them. Do you know whether they were there or not?

A. I didn't see them if they were.

Q. If they were there, they would have been between you and the crowd that passed, would they not?

A. Everybody that was—will you allow me to tell you this?

Q. Never mind. Answer my questions and then I will see whether I want you to say anything more. Would they have been between you and the crowd if they had been there?

A. They would if they had been there.

Q. But they were not there?

A. If they were there they took sides with the crowd and went right on with them, because everybody that was between that corner and the jail went with the crowd.

Q. There was nobody left there?

A. There was nobody seen for about five seconds afterwards. I couldn't see anybody after the crowd went out until Captain Shipp and two men walked out.

Q. Those steps that you were sitting on were at the northwest corner of 6th and Walnut streets?

A. Yes, sir.

532 Q. And also at the northwest corner of the court-house yard?

A. Yes, sir; at the same corner.

Q. Where 6th and Walnut streets cross?

A. Yes, sir.

Q. And on the court-house side of 6th and Walnut streets?

A. Yes, sir.

Q. How long were you there?

A. I was there till they passed by.

Q. You were there while the entire crowd passed?

A. Yes.

Q. The crowd that had Johnson?

A. Yes, sir.

Q. And during that period of time there was nobody else there, in your sight and presence, making observations as you were?

A. Not right there there wasn't.

Q. You speak of a door not being locked. What door was that?

A. That was the iron door that leads into the scales where they weigh the men up.

Q. That door was no protection at all, was it? If it had been locked it would have been kicked down, would it not?

A. No, sir; a mule couldn't kick it down.

Q. It was a door that would be very hard to get open?

A. It is an iron door.

Q. I am asking you whether it was very hard to get open.

533 A. Yes, sir; it was very hard to get open.

Q. You say that you were a constable?

A. Yes, sir.

Q. How long has it been since you were constable?

A. Since I was constable?

Q. Yes.

A. Since the last day of last Steptember.

Q. And you say that you served three "successful" terms?

A. Yes, sir.

Q. How long were each of those successful terms?

A. Two years each.

Q. What did the success of your terms of office principally consist in?

A. I served as constable and I tried to make an honorable constable; and I got arrested several times and didn't get in the penitentiary.

Q. You got arrested several times yourself?

A. Yes, sir.

Q. And did not get in the penitentiary?

A. No, sir; and I didn't kill anybody.

Q. And that is what you call being successful?

A. And I didn't steal anything from nobody; and that is a successful constable.

Q. Your idea of success in an official position is to keep out of the penitentiary?

A. Yes, sir.

Q. That is your idea?

A. Yes, sir; that is the best test, too.

534 Q. The best test of success is that you can keep out of the penitentiary?

A. Yes, sir.

Q. And that is what you mean by serving three "successful" terms?

A. Why, certainly.

Q. You served as constable for Squire Ross, did you not?

A. Yes, sir.

Q. A colored justice of the peace?

A. I did.

Q. Do you know what his real name was?

A. Why, some say his name was Fredericks, but I don't know.

Q. He turned out to be a murderer, going under an assumed name, did he not?

A. That was after he was dead.

Q. That turned out to be what he was?

A. Yes, sir.

Q. You knew all the time, did you not, that his name was Fredericks?

A. No, sir; I didn't. I was acquainted with him, but I didn't know that.

Q. You were Ross's constable?

A. Yes, sir.

Q. You and Ross ran this establishment over there?

A. We ran a justice of the peace office.

Q. And Ross was indicted for it, was he not?

A. Yes, sir.

535 Q. And he was indicted for larceny, forgery, and various other offenses, was he not?

A. No, sir; he was indicted for—it wasn't larceny.

Q. What was it; what do you call it?

A. Mr. Cooke there can tell you.

Q. I am asking you.

A. They call it "elooting" the county.

Q. And Ross resigned his office, did he not?

A. Yes, sir.

Q. And Ross paid up, did he not?

A. Yes, sir.

Q. And got out of the way?

A. Yes, sir.

Q. And who was one of the principal witnesses in the case?

A. I was a witness.

Q. You were one yourself?

A. I was in my own behalf. I was arrested, too.

Q. What were you charged with?

A. Charged with elooting the county. I don't know what else they had there, but that is what they told me.

Q. I will ask you whether or not——

I want to save the trouble of getting a certified copy of this.

Mr. SANFORD. I think that is not competent. You will have to ask the witness. I can not agree to what I consider incompetent, of course.

By Mr. PRITCHARD:

536 Q. I will ask you whether or not this indictment was not found against you?

A. Against me?

Q. Wait until I read it. I ask you whether or not this indictment was not found against you. I read from the original indictment:

"State of Tennessee, Hamilton County"——

Mr. SANFORD. I desire to note an objection to the competency of that evidence as to the terms of the indictment.

The COMMISSIONER. The stenographer will note the objection.

A. I was never convicted anyhow.

By Mr. PRITCHARD:

Q. Never mind about you argument now. I will read this to the stenographer and the court:

"State of Tennessee, Hamilton County. Circuit Court, September term, 1901.

"The grand jurors for the State aforesaid, being duly summoned, elected, empaneled, sworn, and charged to inquire for the body of the county aforesaid, upon their oaths present: That Joe Franklin, an elected, commissioned, and qualified constable for Hamilton County, Tennessee, heretofore on the day of , 1900, in the county aforesaid, did unlawfully, feloniously, wilfully, fraudulently, and falsely represent to Hamilton County that he the said Joe Franklin as such constable was entitled to Hamilton County warrants from Hamilton County of the value of four hundred and fifteen dollars of good and lawful money of the United States as services rendered Hamilton County as constable in small offence cases
537 tried and submitted by defendants in State cases by and before elected, commissioned, and qualified justices of the peace for Hamilton County, when in truth and in fact the said Joe Franklin was only entitled to Hamilton County warrants of the value of three hundred and twenty-six dollars of good and lawful money of the United States, which false, felonious, and fraudulent representations the said Joe Franklin well knew at the time that he made them that they were false and made with intent to defraud Hamilton County and for the purpose of deceiving and obtaining from Hamilton County the following personal property, to-wit: Hamilton County warrants of the value of four hundred and fifteen dollars of good and lawful money of the United States. The said Joe Franklin, constable, was legally entitled to Hamilton County warrants of the value of three hundred and twenty-six dollars of good and lawful money of the United States upon cases where defendants had submitted their cases under the small offense law before justices of the peace of Hamilton County and defendants had worked out the costs in the work house of Hamilton County, but was not entitled to receive from Hamilton County its warrants for four hundred and fifteen dollars, and this the said Joe Franklin well knew. On the day aforesaid the said Joe Franklin, constable, unlawfully, falsely, feloniously, and fraudulently obtained from Hamilton County Hamilton County warrants Nos. 43531, 45611, 45612, 46638, 46639, 46680, 47205, which warrants included and were for costs taxed in favor of and to the credit of said Joe Franklin upon false, fraudulent, and illegal bills of costs to the amount of eighty-nine dollars and also legal costs
538 taxed to the credit of said Joe Franklin, constable, to the amount of three hundred and twenty-six dollars of good and

lawful money of the United States. The legal and illegal costs so obtained from Hamilton County by said Joe Franklin amounted to four hundred and fifteen dollars, which amounts were embodied in Hamilton County warrants Nos. 43531, 45611, 45612, 46638, 46639, 46680, 47205, and said warrants aggregated and were of the value of four hundred and fifteen dollars of good and lawful money of the United States, and the said Joe Franklin well knew at the time he obtained said warrants he was not entitled to warrants for $89.00 on said fraudulent bills of costs, and by reason of said unlawful, felonious, false, and fraudulent representations and said illegal and fraudulent bills of costs the said Joe Franklin did on the day aforesaid and in the county aforesaid become possessed of said personal property, the property of Hamilton County, which he the said Joe Franklin unlawfully, feloniously, and fraudulently converted to his own use, and so the grand jurors aforesaid, upon their oaths aforesaid, say and present that Joe Franklin did on the day of , 1900, in the county aforesaid commit the offense of obtaining from Hamilton County Hamilton County warrants Nos. 43531, 45611, 45612, 46638, 46680, 47205 of the value of four hundred and fifteen dollars of good and lawful money of the United States when he was only entitled to Hamilton County warrants of the value of three hundred and twenty-six dollars of good and lawful money of the United States, and this the said Joe Franklin well knew, and he the said Joe Franklin did obtain the property aforesaid under false pretenses, the same being the personal property of Hamilton County
539 which he the said Joe Franklin converted to his own use.

Second count: The grand jurors aforesaid, for the State aforesaid, being duly summoned, elected, empanelled, sworn, and charged to inquire for the body of the county aforesaid, upon their oaths present: That Joe Franklin heretofore on the day of , 1900, in the county aforesaid, did unlawfully and feloniously take, steal, and carry away Hamilton County warants Nos. 43531, 45611, 45612, 46638, 46639, 46680, 47205 of the value of four hundred and fifteen dollars ($415.00) of good and lawful money of the United States, the personal property of Hamilton County, against the peace and dignity of the State.

(Signed) W. E. DONALDSON,
Attorney-General.

Endorsed: "No. 19090. A true bill. H. H. Hedden, Foreman grand jury. Charge: Larceny, &c. State of Tennessee vs. Joe Franklin. C. H. Bennett, prosecutor. Clerk's summons for State. C. H. Bennett, T. F. Stewart, E. Wassman, H. D. Huffaker. W. E. Donaldson, attorney-general. Filed in office 23d day of September, 1901. R. H. Howard, clerk."

Mr. SANFORD. I desire, if that is offered in evidence—I did not understand that it was——

Mr. PRITCHARD. Yes, sir; I offer it in evidence.

Mr. SANFORD. I desire to object on the further and additional ground that it does not purport to be a full copy of the record; that it is not a certified copy at all; that it is not a record of this court, and that it is inadmissible; and if it should be competent at all it would require a certified copy of the entire record; that it is
540 inadmissible for any purpose, but especially as the original is not in court.

The COMMISSIONER. The objection will be noted.

By Mr. PRITCHARD:

Q. I ask you if you are not the same Joe Franklin who is described in this indictment that I have just read.

A. I am the same Joe Franklin that is in the writ that you got there, but you have written that out since, because I settled all that, and there was no such charge. You just done it for slander, because you white people go in court and I am a nigger and can't help myself.

Mr. SANFORD. Franklin, stick to your answers.

The WITNESS. I am sticking.

Mr. PRITCHARD. Let him answer. I am not objecting.

The WITNESS. I settled that thing off.

By Mr. PRITCHARD:

Q. All right. Then there was no such indictment as that found against you at all; it has been written since?

A. Oh, you found some indictment against me up there. You didn't make me sensible of none of it. You called the case and Mr. Cooke told me to settle my case up as quick as I could, and I went to the bank and got my money.

Q. When you say "you," you do not mean me?

A. I mean all the white folks. Mr. Cooke, there, was the one that told me to go and get the money. He says: "I don't believe you were sensible of the thing, because you had nothing to do with the writing of the warrants," which I didn't. You brought up that I stole the money. I never stole a cent from the county, and nobody in
541 this county. I never did. If I had, you would have had me in the penitentiary before now. You put every nigger in the penitentiary that steals anything in this county. I know it, and you know it.

Mr. SANFORD. Mr. Commissioner, I ask that the witness be instructed to reply to the questions and to confine himself to the matters propounded to him.

The WITNESS. I will answer the questions.

The COMMISSIONER. Just answer the questions that are put to you, Franklin, and nothing else. You need not argue any other case.

By Mr. PRITCHARD:

Q. Now, Joe, you say that you were not indicted as this indictment has been read to you?

A. Oh, I was indicted before the court like the rest of the men. I don't dispute that.

Q. But the indictment that was read to you is not the indictment that was found against you, but it is some substituted paper, some forgery that has been gotten up against you since?

A. Something; I don't know. All that wasn't read to me.

Q. It was not read to you?

A. No, sir; it wasn't.

Q. After this indictment had been found against you, I will ask you to state whether or not you made open negotiations with Mr. Cooke, the county attorney, for your own release, upon condition that you would pay up and tell on the others that were guilty of
542 this larceny—this stealing, as I call it?

A. I told Mr. Cooke if he would—— No, sir. I told Mr. Cooke if he would, I would give the money back. I knew nothing about this matter that Mr. Ross was fixing up.

Q. You gave some money back? How much did you give back?

A. $42, I think, or $44.

Q. You paid some of the money back?

A. I paid all of it back.

Q. All that they charged you with getting illegally?

A. Yes, sir.

Q. Did you tell on the others? In other words, did you turn state's evidence?

A. I told the thing just like it was.

Q. You told it like it was?

A. Yes, sir.

Q. You paid up what you had got and told on the others?

A. I only answered questions like I am doing now—what Mr. Cooke asked me.

Q. Then Mr. Cooke let you off?

A. No, sir. He told me——

Q. Didn't he let you off?

A. After I paid the money back.

Q. You paid the money and you told on the others, so that he got the others?

A. He had the others already.

Q. But he did not have evidence against them, did he? You turned state's evidence against the others, did you not?

A. I don't know that I did. I didn't turn no state's
543 evidence?

Q. Well, you told on them, did you not?

A. They didn't ask me about any State's evidence.

Q. They didn't call it State's evidence?

A. No; they didn't ask me about State's evidence.

Q. But you told on the other thieves so as to get out yourself, did you not?

A. No, sir; I didn't say that. I will tell you what he said.

Q. Tell us what he said.

A. He said, "Franklin"—as he called these people over—"I want to know did you take them to the workhouse;" and when he called

them over I said "No, sir, I didn't." I couldn't say I took them to the workhouse when I didn't.

Q. You had collected fees for taking men to the workhouse that you had not taken to the workhouse; so you told Mr. Cook the names of the fellows in these cases that you had gotten money for?

A. I didn't know until that time. Mr. Cooke made me sensible.

Q. You made him sensible on the other thing?

A. Yes, sir.

Q. So that he could get after the other fellows?

A. Yes, sir. I didn't care what he done. There was no State's evidence turned in. I told him the truth about the matter.

Q. Were any of those men sent to the penitentiary?

A. Yes, sir.

544 Q. How many of them?

A. One.

Q. Who was he?

A. Mr. Sibley.

Q. Was he a white man or a colored man?

A. A white man.

Mr. SANFORD. I desire to object to this evidence as entirely irrelevant and incompetent as to the indictment of other persons, as secondary evidence, there being no records introduced. These are matters that have absolutely nothing to do with the proper cross-examination of this witness.

The COMMISSIONER. The objection will be noted.

Mr. PRITCHARD. I will have the records in due time, but I did not have time to prepare the records to-day. I did not know when you were going to get your witness here, and did not have the records ready. But these are sufficient for me to examine him upon for the present.

By Mr. PRITCHARD:

Q. There were a number of them indicted at that time?

A. Yes, sir.

Q. And the only man sent to the penitentiary was a white man?

A. Yes, sir.

Q. So that these negro thieves, you and Ross, got off without being sent to the penitentiary?

A. Yes, sir; we got off, and he would have got off too if he had paid the money back.

Q. So you are mistaken about sending negro thieves to

545 the penitentiary, are you not?

A. I was if I had stole anything.

Q. How about Ross?

A. I don't know much about his case.

Q. He was not sent to the penitentiary, though, was he?

Mr. SANFORD. I desire to continue my objection. It is not necessary, I presume, to renew the objection?

Mr. PRITCHARD. No.

Mr. SANFORD. It will be understood that it applies to this line of cross-examination.

Mr. PRITCHARD. Yes; I understand that.

By Mr. PRITCHARD:

Q. Ross and you were elected from the same district?

A. Yes, sir.

Q. And what district was it?

A. The 10th civil district.

Q. It has a large majority of colored voters, or had at that time, did it not?

A. Yes, sir.

Q. And you and Ross were elected by them?

A. Yes, sir.

Q. Both of you colored?

A. Yes, sir.

Q. They redistricted the county afterwards?

A. Yes, sir.

Q. So that you could not be elected any more?

A. They just done it to keep me out.

Q. You and Ross, too, was it not?

A. Yes, sir.

546 Q. You both proved to be thieves, and they wanted to keep you out?

A. Oh, no, no. Ross had been dead long before that. They done it to through the Democrats in power; that is all. It was done to throw the Democrats in power, and it done it. At least it has been going Republican ever since.

Q. So you retired from public life at that time?

A. Yes, sir.

Q. I have in my hand a paper which I will read to you, and then I will ask you a question on it:

"State of Tennessee, Hamilton County. Criminal Court, May term, 1904.

"The grand jurors for the State aforesaid, being duly summoned, elected, empanelled, sworn, and charged to inquire for the body of the county aforesaid, upon their oaths present: That J. R. Franklin, heretofore, on the 20th day of February, 1904, in the county aforesaid, did unlawfully, feloniously, and forcibly take from the person of Peter Gates, by violence and putting him, the said Peter Gates, in fear, two bills of the denomination and value of $5.00 each, good and lawful money of the United States, the personal property of said Peter Gates, against the peace and dignity of the State.

(Signed) "M. N. WHITAKER,
Attorney-General."

Endorsed: "No. 21628, a true bill. D. W. Thomas, foreman grand jury. Charge: Rob. State of Tennessee vs. J. R. Franklin. Peter Gates, prosecutor. Clerk's summons for State. Scott Hudson,

547 W. J. Poe, Will Tousley, G. L. Nelson, U. G. Caulk, Peter Gates, Robt. Poe, Wm. Deckert. M. N. Whitaker, Attorney-General. Filed in office 11th day of March, 1904. R. H. Howard, clerk."

I will ask you whether or not you are the same man that is named in this indictment?

A. Oh, yes; I was the same man. I was indicted again there. A white man had me indicted. Why don't you read that?

Q. Gates was a darky, was he not?

A. Gates was a darky.

Q. He was not a white man, was he?

A. The other time it was a white man.

Q. This man Gates, who indicted you for robbery, was a colored man?

A. Yes, sir; he was a colored man.

Q. I will ask you another question. I will read this paper first and base the question on it:

"State of Tennessee, Hamilton County. Personally appeared before me, A. J. Ware, an acting justice of the peace"——

I will withdraw that. I will ask you whether or not——

A. Read it and I will tell you.

Q. Don't you dictate to me as to how I shall conduct my examination. I will ask my questions as I please.

A. All right, sir.

Q. I will ask this question—whether or not you were arrested and charged with larceny before Justice of the Peace Ware; for stealing?

A. If I was I don't know nothing about it.

Q. You do not remember it?

548 A. No, sir. None of these things move me.

Q. None of them move you at all?

A. None of these things move me.

Q. You do not care for being charged with various and sundry crimes? They do not affect you at all?

A. Not in these courts.

Q. Not in these courts?

A. No, sir.

Q. You have such a contempt for the state courts here that you do not care for them?

A. I do in the federal court.

Q. You respect that?

A. I respect your court, too, the state court; but I don't respect that paper you brought up there about my stealing. I ain't never done it. All those papers about stealing—I ain't stole nothing.

Q. What do you mean by saying that none of these things move you; you do not care for being charged in these courts?

A. Because you will get up anything on a nigger. That is what I mean. You ask me the question and I answer it. Anything that will throw him you get up on him.

Q. But it did not throw you, though, you tell me?

A. Well, you are trying to do it and I am trying to keep you from it.

Q. Trying to do it?

A. You are trying to do it now.

Q. You mean I am trying to do it?

A. Yes, sir.

Q. But you do not care for these little, insignificant
549 things like being indicted for robbery?

A. I am a praying man, and none of these things move me.

Q. You are a praying man?

A. Yes, sir.

Q. Were you a praying man when you stole this money from Hamilton County?

A. I was a praying man when I didn't steal it.

Q. Were you a praying man when you paid it?

A. I was a praying man when I paid it.

Q. Were you a praying man when you and Ross, this murderer, ran that joint out there?

A. I never run no joint.

Q. You were his deputy and constable. Were you a praying man then?

A. I was not his constable, sir.

Q. You were not his constable?

A. No, sir.

Q. You ran a night office over here on East 9th street, you and Ross, did you not?

A. No, sir; we ran a justice of the peace's office there. Sometimes we would have cases at night. Do you want me to answer that question?

Q. Yes; answer the question.

A. We ran a justice of the peace's office there at night and in the day; and you lawyers—I don't mean you individually——

Q. You never saw me in your joint?

550 A. All the lawyers wanted their cases set for the evening, when they could get off and when their clients could get off from work; and that is why we had them at night. But it wasn't no joint. It was the same about all the white justices of the peace.

Q. Most of the people you tried were people of your own color?

A. We tried some white men. Most of them were colored men.

Q. And those charges were made on warrants issued by Ross and served by you?

A. No, sir.

Q. What is that?

A. No, sir. He issued the warrants, but he didn't swear them out himself.

Q. Colored people swore them out, though, did they not?

A. Yes, sir; and some white people.

Q. Ross issued them and you served them?

A. Why, certainly.

Q. Were any of them convicted?

A. Yes, sir. I served warrants for white justices, too.

Q. You said a while ago that you were indifferent to these things being in the state court. I would like you to explain what you meant by that, to get back to the old subject. What do you mean by saying that you do not care anything for these charges because they were in the state court?

A. I mean to say this——

551 Q. Now, say it. That is what we want.

A. I mean to tell the truth on the stand.

Mr. SANFORD. I desire to note an objection to this testimony. It is entirely foreign to the cross-examination of this witness. It does not affect his credibility in any way, manner, or form, and is not relevant to any issue in this case; and I desire to solemnly protest against it—the question of what he thinks about one court or another.

Mr. PRITCHARD. I want to get this into the record. Any court that does not see a witness can perhaps tell what manner of witness he is by getting his language in the record, and for that reason, so that they can see what manner of men we have here, I want to have this testimony in the record.

Mr. SANFORD. Any matters that affect the credibility of this witness, of course, may properly be inquired about, and I have no objection to such matters. But this has no relevancy whatever.

Mr. PRITCHARD. I submit that it does affect his credibility, and when it goes to the court the court will see that it does affect his credibility.

By Mr. PRITCHARD:

Q. I want you to answer that question, Franklin. What did you mean by that statement that charges of this character in the state court were not regarded by you, and did not amount to anything?

A. I meant this, that these lawyers' clients would get up any kind of a case against a colored man simply because he was a colored officer, and had it not been for Judge McReynolds being my

552 friend I would have been in the penitentiary to-day. The judge dismissed it and said there was nothing in it. He said, "I see clear through it right now," and he dismissed it on his own say so. They tried their best to get me in the penitentiary. Even when I was a witness on the stand in another case they tried to throw me and tried to get me in the penitentiary simply because I was the only nigger in the county serving as an officer. It looked to me that way.

Q. This Judge McReynolds, your friend, is the same judge that tried Ed Johnson, is he not?

A. Yes, sir.

Q. And it was through Judge McReynolds' friendship for you that you escaped the penitentiary?

A. No, sir; it wasn't friendship. He saw there was nothing in it. In the Peter Gates case that you read just now, when they called the

case that morning, I hadn't done anything but collect money for the court from Peter and turn it over to the court. I hadn't used anything of it to my own interest. Now, you come up here and say I stole it. I didn't do it. I turned the money to the court, and when he seen that Judge McReynolds said: "I will dismiss this case right now." He said: "Peter, don't you come up here any more with that stuff." That is the charge you read there, that I stole Peter Gates' money. I turned it over to the court, and the record will show it up there.

Q. It was some money that you and Ross had made Peter Gates pay to keep out of jail, was it not?

553 A. No, sir; it was not. Peter got in a fight over there at the works with a man, and whipped him, and then jumped on him again, and the man had two warrants swore out against him. This man and Peter's boss came over, and Peter's boss says: "You pay that money in here and stop that thing, and I will be responsible for it."

Q. But the reason you say that you do not care for these things is because they just convict a nigger anyhow.

A. Don't you see what you are doing there?

Q. Because I am asking you these questions——

A. You are trying to put it before the judge that I was stealing, and I didn't steal nothing. That is the reason I said what I did. I haven't stole nothing; never have stole nothing. I don't care who says I steal. They can't bring it up in court unless they swear falsely. I never stole nothing from nobody.

Q. You say that you lived in Chattanooga up to what time? When did you leave here?

A. I left January 8th.

Q. Where are you living now?

A. Chattanooga.

Q. How long have you been living here?

A. I have been living here since 1883.

Q. And this is still your home?

A. Why, yes, sir. I never moved my family away from here.

Q. So you have not been absent?

A. I have been absent, sir.

Q. Where were you?

554 A. I once went from here to Los Angeles, California, and I left there and went to San Francisco and stayed three days. I came back from San Francisco to Salt Lake City, and I stayed over there three or four days; and I come on down to Denver, Colorado, and went under the treatment of a doctor there and was operated on.

Q. How long has it been since you left Chattanooga?

A. Since January 8th.

Q. And you have been gone from January 8th down to this time?

A. Yes, sir.

Q. Continuously?

A. Since January 8th.

Q. And this is your first visit to Chattanooga since January 8th?
A. Yes, sir.
Q. Where did you come from when you came here?
A. St. Louis, Missouri.
Q. Did you come voluntarily or otherwise?
A. I was subpœnaed by the United States.
Q. What do you get out of it?
A. Why, they just subpœnaed me to come here forthwith.
Q. I say, what do you get out of it? Do you get anything out of this?
A. I don't know as I get anything only the witness fee.
Q. Have you been promised anything?
A. No, sir; no one promised me any big thing.
Q. No inducements have been held out to you?
555 A. No, sir.
Q. What were you promised?
A. I haven't been promised anything.
Q. What do you mean by not promising any big thing?
A. I say I don't know as I will get any big thing, only my witness fees.
Q. Did you pay your own expenses?
A. I did not.
Q. Who paid them?
A. Three men in St. Louis. I don't know who they were.
Q. How much money did they give you?
A. They didn't give me any.
Q. What did they furnish you with?
A. Tickets and fare.
Q. With what?
A. My ticket to come here on.
Q. Did they furnish you anything for expenses?
A. Board; yes, sir.
Q. You said they did not give you any money.
A. No; they didn't give me any money. They paid for my fare and told the conductor there was three meals a day due me.
Q. Did they furnish you no money to pay for your meals with?
A. Not a cent.
Q. They didn't give you a nickel?
A. Not a nickel.
Q. And you came to Chattanooga?
556 A. I came to Chattanooga.
Q. With whom had you previously had conversations about this case?
A. Since I have been here?
Q. No; before you came here.
A. I haven't had any with nobody before I came here.
Q. You had no talks at all with anybody?
A. Nobody that knew anything about it; only those men that subpœnaed me.

Q. Who were they?
A. They said they were United States officers.
Q. Did they give you their names?
A. They did, but I have forgotten.
Q. You have forgotten all the names?
A. Yes, sir. One of them gave me his name. He introduced me to the others, but I have forgotten them.
Q. Where were you when you were subpœnaed?
A. In St. Louis, Missouri.
Q. When?
A. Wednesday morning.
Q. Last Wednesday morning?
A. Last Wednesday morning.
Q. And up to that time you had not communicated to anybody any of the facts that you have testified to here?
A. Not since I have been gone.
Q. Before you went, whom did you communicate with?
A. Why, I talked with Mr. Ware about it that night after I come back.
Q. Who else did you talk with?
557 A. I talked with Mr. Early there.
Q. Mr. John H. Early?
A. Yes, sir.
Q. Who else did you talk with?
A. I talked with Mr. Pendleton there.
Q. You talked to Mr. Penland?
A. Yes, sir.
Q. You mean Mr. Penland, the district attorney?
A. Yes, sir.
Q. Who else did you talk with?
A. I talked with—you mean since I have been back?
Q. Oh, no; I am asking you about before you went off.
A. I don't know.
Q. Have you talked with any detective or agent or secret service man of the Government?
A. I talked with him since I come back.
Q. Did you talk with him before you went?
A. I talked with one that said he was.
Q. Why didn't you say that at first, when I asked you the question?
A. I told you who I did talk with.
Q. Why didn't you say that at first, when I asked you if you had talked to any representative of the Government?
A. I just didn't say it.
Q. You just didn't say it?
A. Yes.
Q. I just have to pump it out of you. Now, before you went, how many times did you have conversations with any detective or secret service man of the Government?

558 A. I think once or twice.

Q. Was it once or twice?

A. I think it was twice.

Q. Was it just one man or more than one man?

A. There were two.

Q. So that when you said a man you meant men, did you?

A. Well, I did say man. I meant there was two.

Q. Don't forget that you are a praying man.

A. I don't mean to tell an untruth.

Q. I see you don't. You talked with two, and you talked with them twice?

A. Yes, sir.

Q. The same two men?

A. Yes, sir.

Q. What were their names?

A. One of them, I can't think of his name.

Q. Was not one of them named Dickey?

A. I think so. I think one of them was named Dickey.

Q. What was the other one's name?

A. I have forgotten his name.

Q. Do you remember either name? You said a while ago you had forgotten one of the names; now you have forgotten which it was.

A. You asked me about Dickey. He was one of them.

Q. That was the one you remembered?

A. Yes.

Q. Then why did you have to wait for me to suggest that name, and then say you believed that was the name?

A. I didn't say I believed.

559 Q. You did not say that?

A. No, sir.

Q. All right. So you remember Dickey, but do not remember the other one?

A. I know his name, but I can't think of it now.

Q. Did you talk with them more than twice before you went off?

A. It strikes me now that I talked with them twice.

Q. Does it not strike you that you talked with them more than twice?

A. No, sir.

Q. Didn't you talk with them more than twice?

A. I seen them twice.

Q. Did you talk with them more than twice or not?

A. Well, if I did it slipped my memory.

Q. If you talked with them three or four times, it has slipped your memory?

A. What do you mean? Do you mean meet them three or four different times?

Q. Yes, three or four different times. If you talked with them three or four different times or more, it has slipped your memory? You only remember twice?

A. You mean about this case?

Q. Yes, yes; or anything connected with this case. You did not talk with them but twice?

A. I was here two or three days. I might have talked with them more than twice. I am not positive.

Q. You are not positive. At first you only talked with one man and only talked with him once.

560 A. I said there was two, but I couldn't think of his name.

Q. You said that after a while, but at first you only talked with one man once.

A. Those are strangers, you see.

Q. Wait a minute. Now you say you talked with two men two or more times. Now, where did these conversations and conferences take place? Where was the first one?

A. Here on the street is all I know.

Q. Tell us where on the street. There are several streets in Chattanooga. What street was it, and where?

A. On Ninth street.

Q. What place on Ninth street? Stick to the first talk now. At what place on Ninth street did this first conversation occur?

561 A. On the corner of Ninth and B street.

Q. On the corner of Ninth and B streets?

A. Yes, sir.

Q. Was it inside of a house or not?

A. No, sir.

Q. Was it out on the sidewalk?

A. It was right there where they put up that new building. They was putting it up then.

Q. Who was there at the time of the conversation besides you and these two men?

A. Nobody heard the conversation.

Q. Nobody heard the conversation?

A. No, sir.

Q. Was it in the day time or at night?

A. In the daytime.

Q. How soon after the lynching of Ed. Johnson; or when was it?

A. It was right after it, but I couldn't tell you now how soon.

Q. It was right after it?

A. Yes, sir.

Q. Did you give them any written statement?

A. I believe I give a statement the last time I was with them.

Q. Let us stick to the first time.

A. No, sir.

Q. You did not give any written statement, but you told those people what you professed to know then?

562 A. I told them what I did know.

Q. You told them what you did know, or what you swear you know?

A. Yes, sir.

Q. Where was the next conference between you and these two men?

A. I believe it was out at Churchville.

Q. How far is Churchville from Chattanooga?

A. It is about 2200, I reckon.

Q. It is about what?

A. No. 2200 or 2,000.

Q. Churchville is a colored settlement near Chattanooga?

A. Yes, sir.

Q. It occurred there. Were both of these two men present at that conference at Churchville?

A. Yes, sir.

Q. Did this occur at any house?

A. Yes, sir.

Q. Whose house did it occur in?

A. They came to my house.

Q. Was it in the night or day?

A. In the evening.

Q. Night or day?

A. Night.

Q. Night?

A. Just about dark. They came first and I wasn't there and
563 they came back. My wife told them to come back about dark and I would be there.

Q. They made two trips the same day did they?

A. Yes, sir.

Q. Did they take any written statement at that time?

A. That is the time they taken it.

Q. They took a written statement from you at that time?

A. Yes, sir.

Q. Did you sign it?

A. I disremember whether I did or not.

Q. Were they the same two men that had seen you the first time?

A. Yes, sir.

Q. Where did the next conference take place?

A. I didn't have no other conference?

Q. Those were the only ones you had?

A. Yes, sir.

Q. Were any inducements, or offers, or promises of reward made to you for your statement by either of these men?

A. No, sir.

Q. None whatever?

A. No, sir.

Q. And these were the only conferences, as I understand you, that took place at all—these two?

A. That is, just about this case. I met them on the street and spoke to them, numbers of times.

Q. Numbers of times. Would you speak to them about this case?

A. No, sir.

564 Q. You would not speak to them about this case. After you left here did you have any conferences about this case with any person?

A. No, sir.

Q. Nobody at all?

A. No, sir.

Q. Did you have any correspondence about it?

A. No, sir.

Q. You did not have any at all?

A. No, sir. You mean written correspondence?

Q. Or typewritten, either?

A. No, sir; I didn't have any at all.

Q. None at all?

A. Of no kind since I left.

Q. Do you know old man Kramer who has a store on King street?

A. I know him, but he has no store.

Q. He lives on King street, but has no store at all?

A. He makes clothes and sells them on time.

Q. The night before you went West, did you buy any clothes from him?

A. No, sir.

Q. You did not buy anything from him?

A. No, sir; not the night before I went west, I didn't.

Q. When did you buy them?

A. A month or two before I left.

Q. Did you pay for them?

565 A. I haven't paid all. I kept the payments up until I left, and I told him I would send him some money back; but I got sick, and I didn't send any back.

Q. Do you know anything about Kramer's taking a warrant out for you, for that?

A. No, sir.

Q. You do not know anything about that?

A. No, sir.

Q. You never heard of that?

A. No, sir.

Q. You did not know you had been charged with obtaining that suit of clothes by false pretences?

A. I have not obtained them under false pretences.

Q. But you were not charged with it that you know of?

A. No, sir.

Q. Did he retain title to those clothes, to provide against your taking them away?

A. No, sir; he did not. I paid him the very morning I left, and told him I was going off, but I would be back.

Q. You did not pay him in full?

A. No, I did not. He knew that, and he told me it was all right.

Q. He told you it was all right; you could go ahead?
A. Yes, sir.
Q. And you did leave?
A. Yes, sir.
Q. You left after these conferences with these detectives. How soon after that was it that you left and went west?
A. I don't know.
566 Q. How long was it after the last conference with the detectives?
A. I didn't go off to stay no how.
Q. I did not ask you that. How soon after the last conference that you had with the detectives was it that you went west?
A. I couldn't tell you.
Q. About how long was it?
A. I couldn't tell you that.
Q. Was it a month?
A. I don't know whether it was a month or two months.
Q. Was it a week?
A. I don't know, sir.
Q. I will ask you if you had not seen these detectives immediately before going west?
A. No, sir; I did not.
Q. Where did you get the funds with which you paid your expenses on this long western tour?
A. You mean my money?
Q. Yes, sir; the money.
Q. It was money I got while I was a constable.
Q. It was money you got while you were constable?
A. Yes, sir.
Q. You still had some of that money?
A. Yes, sir.
Q. And that was the money you used to go west on?
A. Yes, sir.
567 Q. If you had that much money—did you not say a while ago that you had to buy this suit of clothes on the instalment plan, when you went west?
A. I didn't buy them to go west with.
Q. But you went west a month afterward?
A. I went west afterwards. I didn't know when I got the clothes that I was going west.
Q. You had the money then, but you did not know you were going West. Why did you not pay for them?
A. I bought them on the instalment plan——
Q. You could buy cheaper for cash.
A. But that was not the agreement between me and him.
Q. You did not know you were going west, and you had plenty of money, and in buying a suit of clothes you had to pay more on the instalment plan.

A. I am going to tell you the truth. When I bought the suit of clothes I bought them on the instalment plan, and kept the payments up; and when I heard the trial was set——

Q. That was long before this thing ever came up—before this trial was set?

A. Yes, sir; and when I heard the trial was set at Chattanooga, I said "I don't want to testify against these white folks. I will stay out of the way for a few days." That is how I came to go.

Q. You had plenty of money, and did not know you were going West.?

A. I didn't know I was going west until they set the time to have the trial at Chattanooga. When they set the time to have the trial in Chattanooga I went west. It was not my intention to go west when I got the clothes.

568 Q. Now I will ask you a question, and get you to answer it. At the time you bought the suit of clothes you had plenty of money, and you did not know you were going west. Why did you not pay for the suit of clothes?

A. I didn't have the money in my possession then.

Q. You did not have the money?

A. It was not in my possession.

Q. Where was it?

A. It was in bank.

Q. Was it not there in your name?

A. Yes, sir.

Q. Could you not draw it out?

A. I could by losing.

Q. You could by losing?

A. Yes, sir.

Q. What bank was it in?

A. Some was in the First National Bank.

Q. What other bank?

A. Some in——

Q. What other bank did you have money in?

A. Around on Eighth street.

Q. And you had money in the First National Bank?

A. Yes, sir.

Q. At the time you went west?

A. No, sir; before I went west.

Q. How long before?

A. I drawed the money out, I think, about a month before.

569 Q. About a month before you went west. How much money did you have in bank at the time you went west?

A. I think a hundred dollars.

Q. How much did you have in bank at the time you bought that suit of clothes on the instalment plan?

A. I didn't have any.

Q. You had none at all?

A. No, sir.

Q. Did you not, a while ago, swear that you had it in bank, but you could not get it out——

A. I had it in bank——

Q. Did you not, a while ago, swear you had money in the bank at the time you bought the suit of clothes, but the reason you did not pay for them was that you could not get it out without losing?

A. Yes, sir.

Q. You now swear that you did not have any at all?

A. I didn't have any I could get at.

Q. Did you not swear a little while ago that at the time——

A. I didn't mean I didn't have any money; but I couldn't get to it.

Q. Did you not, a while ago, swear that at the time you bought the suit of clothes you did not have any money in bank?

A. I did have some money in bank.

Q. Did you not swear that you did not, though? I am not asking what the fact is, but what you swore about it?

570 A. I said I had it, but couldn't get to it.

Q. That is what you said?

A. Yes, sir.

Q. So you did not swear a while ago that you did not have any?

A. I didn't virtually have none; no, sir.

Q. You drew this money out of the bank, did you?

A. Yes, sir.

Q. What other bank did you have money in besides the First National?

A. The First National, I didn't have none in when I got the clothes, but I had some in this bank around here.

Q. What bank? Mr. Sadd's?

A. I reckon so.

Q. At the corner of Eighth and Cherry?

A. Yes, sir. You go down there and you will see where I drawed it out.

Q. Yes, we are going there to find out. When did you draw that out?

A. The day I left.

Q. How much did you draw out?

A. $100.

Q. That was what you drew out of there?

A. Yes, sir.

Q. When did you put that $100 in there?

A. I disremember now.

Q. Was it some of that constable money?

571 A. It was money I made, but I had it out in different places. I just took it and put it in bank.

Q. It was some of the money you made while you were constable?

A. Yes, sir; it was some of that same money.

Q. So it had been in there at least three years?

A. No, sir.

Q. How long had it been in there?

A. It hadn't been in there that long.
Q. Well, how long did it stay in bank before you got it out?
A. I put it in there—I don't know.
Q. You do not know?
A. No, sir.
Q. You have no idea whether it had been there a year or not?
A. I know it had not been there a year.
Q. Had it been there a month?
A. It might have been.
Q. Had you gotten it from the detectives?
A. No, sir.
Q. Where had you been keeping it all the time? If you earned it several years before, when you were constable, where had you been keeping it?
A. I had it in ground then.
Q. What do you mean by "in ground?"
A. I had it in ground, and I sold it.
Q. When did you make the sale?
A. After this trial was set for Chattanooga, and I didn't
572 want to come here and testify.
Q. When did you make the sale?
A. After the trial was set here.
Q. About when was the date of the sale?
A. I couldn't tell you exactly. It was before Christmas; I know that. The trial wasn't set, but I know they were talking of having it here. I said if they had it here I wouldn't stay here; I would leave my family and go away and stay in peace, and then come back.
Q. Yes; you keep on saying that.
A. That is what I did.
Q. Who did you sell to, and what did you sell?
A. I sold a lot to Wilkerson Brothers.
Q. How much did you sell it for?
A. $300.
Q. For cash, or on time?
A. I got $2500 cash.
Q. Was the lot in your name? You made the deed, did you?
A. Yes, sir.
Q. To Wilkerson Brothers?
A. Yes, sir.
Q. Was this money deposited to your credit in bank?
A. Yes, sir.
Q. What is your name?
A. Joe Franklin.
Q. Have you any middle name?
A. Yes, sir.
573 Q. What is it?
A. Joe Riley Franklin.
Q. Joe Riley Franklin?
A. Yes, sir.

Q. J. R. Franklin?
A. Yes, sir.
Q. You had plenty of money all this time?
A. No, sir; I didn't have plenty of money all the time. When I found out they were going to have the trial here I sold the place and went West.
Q. Do you remember getting Captain Shipp to go your security for a loan?
A. I know I did.
Q. How much was that loan?
A. Twenty-five dollars.
Q. Where from?
A. The Citizens' Bank and Trust Company.
Q. Did you ever pay that?
A. I haven't settled it all yet.
Q. Have you paid any of it? Have you paid a cent of it?
A. No. I went down to see him about it——
Q. What do you mean by sitting there and swearing, and qualifying things in that way? You are a praying man, and you say you have not paid all of it, when you have not paid a penny of it. You have not paid a penny of it?
A. I have not paid it.
574 You have not paid a penny of it. What do you mean by swearing—and you a praying man too—that you have not paid all of it? Why do you qualify it in that way?
A. I will tell you.
Q. Yes, tell us what you mean. I want to understand it.
A. When we get money from the bank, and when it comes due, we go down and we prolong the time, and pay on it. That is it. We prolong the time, and pay on it.
Q. And that is about the end of it, whenever you get money from the bank. Did you ever prolong the time on this transaction?
A. I don't know whether I did on this, but I often do with the bank. I don't know whether I did on this or not.
Q. But you did not do it with this transaction?
A. I wouldn't be positive.
Q. When you swore that you had not paid all, you swore to that to produce the impression that you had paid some of it, did you not?
A. I have not paid Captain Shipp.
Q. You know you have not paid a penny, in the way of discount, interest or any other way; and you never will.
A. It will be paid——
Q. Hold on. And when I asked you to make an explanation you again made a false explanation, did you not?
A. No, sir.
Q. This was never renewed?
A. I paid one renewal note——
Q. This note for $25 was never renewed, was it?
575 A. I am studying over it. I don't know whether I did or not. I always do go down and pay them off.

Q. Why did you swear, in explanation, about a custom or fact that had no application to the thing I was asking you about?

A. Well, you ask me so fast——

Q. I ask you so fast that it does not give you time to think up an answer?

A. I paid on one note; I don't know whether it was on that or not.

Q. It does not give you time to think up an answer that will fit?

A. I have got to think up an answer to what I have done.

Q. You have not had time to think it out. At first you swore you had not paid all, and when asked to explain——

A. Well, I——

Q. Hold on a minute. When asked to explain what you meant by that, you said you knew because of your custom of paying a discount by renewal; and yet you finally admit that this was never renewed.

A. I paid one note. I was thinking that was his, but I found out it was another note altogether.

Q. You knew you had not paid anything on this?

A. I know it now, but I had not thought of it. I had not paid on that, but I paid a personal note. The first, second, and third notes I got at that bank I paid off.

576 Q. Captain Shipp was not on those, was it?

A. I do not know who was on them.

Q. Captain Shipp was not, was he?

A. I don't think he was.

Q. You know he was not, do you not?

A. I don't think he was. It would have been paid off if it had not been for this trial.

Q. I am not asking you about that. Stick to the text.

A. I am sticking to the text. This drove me away from home.

Q. What made you tell about paying on the note when I was asking about the Shipp note?

A. I was thinking I paid on the Shipp note, which I did not. I paid on the other note.

Q. You referred to a note that Captain Shipp was not on?

A. I was thinking he was.

Q. You know that Captain Shipp became your security at the bank for $25, do you not?

A. That is the sum, $25.

Q. You know he became your security?

A. Yes.

Q. And you never paid a cent of it, and Captain Shipp had it to pay. You know that, do you not?

A. He will get his money.

Q. I am not asking you that. You know you never paid a penny on it?

A. No, sir; I didn't pay it.

577 Q. You know that Captain Shipp had it to pay, do you not?

A. Yes, sir; he paid it.

Q. It has taken a long time to get you to say that.

A. You just asked me didn't he pay it.

Q. You pretended you would pay it, and pretended you did not understand it.

A. No, sir; do you reckon I would say I paid a thing when I didn't? I paid some notes off down there, and I was studying whether I paid his note or not.

Q. Did you take a woman away from town with you, and leave your family?

A. No, sir; I did not.

Q. Do you swear you did not?

A. I swear it, and hold up my hand again.

Q. Did a woman go with you?

A. No, sir.

Q. Have you sent your family any money since you left?

A. My family didn't need it. I left some money when I went.

Q. Did you send your family any money when you left?

A. No, sir; I gave my wife $50 of that $100.

Q. Did you desert your family and go off with another woman?

A. No, sir.

Q. Have you been living with another woman since you have been away?

578 A. No, sir; I have not.

Q. You swear to that?

A. I swear to that, and I will swear to another thing. I have not touched a woman since before the 8th of January. I left here on the 8th, and I have not touched a woman—not one. I have been sick more of my time since I have been away. I am telling the truth now.

Q. You give a good reason for it. You were sick?

A. I was sick and in the hospital.

Q. So that accounts for your chastity?

A. Yes, that accounts for it; because I am not a man of iron. I might have been with some woman if it hadn't been for that, but I didn't do it.

Mr. PRITCHARD. Gentlemen who represent some of these people about whom this witness has testified will want to examine the witness and I suggest that we take a recess. I am not going to ask him about those matters.

The COMMISSIONER. We will take a recess until 2 o'clock.

(A recess was thereupon, at 12.10 o'clock p. m., taken until 2 o'clock p. m.)

579 AFTER RECESS.

The hearing was resumed at 2 o'clock p. m.

The COMMISSIONER. If there are any persons in the room who have been summoned as witnesses they must retire.

JOE FRANKLIN (colored) resumed the stand for further cross-examination.

By Mr. PRITCHARD:

Q. What time of the day did you say it was when you went to the jail first on the day of the lynching?

A. Why, some time in the morning; I don't know exactly what time.

Q. About what time in the morning was it?

A. I don't really know. I think I carried a boy up there some time in the morning between 8 and 11 o'clock—between that time.

Q. A prisoner?

A. Yes, sir.

Q. Between what time was that—between 8 and 11?

A. I think so; yes, sir.

Q. Then at what time did you go there next?

A. Well, I went up there. I think I carried that prisoner back, and then went back there.

Q. You went back after the prisoner?

A. Yes.

Q. At what time?

A. I couldn't really tell. I didn't keep no count.

Q. The first time was between 8 and 11?

580 A. I suppose it was.

Q. About what time did you go back there again?

A. I couldn't really tell you. It was in the morning.

Q. In the morning?

A. In the evening.

Q. Well, which was it, morning or evening?

A. Evening. I don't know exactly what time.

Q. Was it in the afternoon or night?

A. In the afternoon.

Q. About what time was it in the afternoon?

A. I really don't know. We generally have trials from two to three——

Q. I am not asking you what you general' have.

A. I am telling you, so I can get at it. We generally have trials from two to three, or three to four. I don't know which of those hours it was.

Q. It was either two to three, or three to four?

A. I wouldn't swear. It was in the evening.

Q. What will you swear?

A. I will swear that I don't know.

Q. You were not there between 11 and from two to three or three to four?

A. I was there during the day twice.

Q. Only twice?

A. Once in the morning and once in the evening.

Q. The first time—and that is the morning time—was between 8 and 11?

A. Yes, sir.

582 Q. And the afternoon time——

A. I mean that I brought prisoners there. Mind you, I carried that prisoner back to the jail when I carried him up.

Q. Let us try it over again. How many times were you there that day?

A. I really don't know, sir.

Q. You really do not know?

A. No, sir.

Q. You said a while ago you were there twice.

A. As much as I can remember, I said.

Q. You only remember twice. You were not there more than twice that you remember?

A. I wouldn't swear that.

Q. You would not swear to that?

A. No, sir.

Q. Will you swear you were there at all?

A. Yes, sir; I will.

Q. You are willing to swear to that?

A. Yes, sir.

Q. You swear you were there twice?

A. I know I was there.

Q. Were you there twice?

A. Yes, sir.

Q. You are positive about that?

A. If Bradford was living I could prove it.

Q. Talk up so that the stenographer can hear you.

A. I say if Bradford was living I could prove it.

583 Q. I am not asking whether Bradford is living or dead, and I do not care. I am asking whether or not you were there as many as two times.

A. I was there two or three times.

Q. Were you there two or three times?

A. I think I was.

Q. Which?

A. I think I was.

Q. Which—two or three?

A. Yes.

Q. Well, which? Were you there two or three times?

A. Two or three times; I don't know.

Q. You do not know whether you were there two or three times. The first time you were there what time were you there?

A. I couldn't tell you.

Q. Was it between 8 and 11 o'clock?

A. Somewheres along there.

Q. Was that earlier than 8 o'clock?

A. No, sir; I didn't go there before that.

Q. Was it later than 11 o'clock?

A. I wouldn't swear to that.

Q. You would not swear to that.
A. I have kept no record on that part. I was not expecting anything of that part.
Q. That is not what you have been drilled on, then?
A. I have not been drilled on anything.
Q. You will not swear whether it was 11 o'clock or not, or whether it was later than 11 o'clock or not?
584 A. No, sir.
Q. But your best judgment is that you were not there in the forenoon later than 11 o'clock?
A. Well, I wouldn't swear to that.
Q. Have you not just now sworn to it?
A. I swore I was there in the morning.
Q. Did you not swear three times that you were not there later than 11 o'clock?
A. No, sir.
Q. Did you not swear that you were there between 8 and 11 o'clock?
A. I did.
Q. Then if you were there between 8 and 11 o'clock you were not there later than 11 o'clock in the forenoon, were you?
A. I wouldn't swear to that.
Q. You have been swearing to it, have you not?
A. I said somewhere between 8 and 11.
Q. It was not after eleven?
A. I don't swear to that.
Q. You do swear to it, and then say you will not swear.
A. I was there during the day.
Q. You took a prisoner there between 8 and 11?
A. I sure took a prisoner.
Q. What was the prisoner's name that you took there between 8 and 11?
A. I kept no record of it. I can not tell you.
585 Q. Was it a white man or a colored man?
A. I know he was a colored man.
Q. Was he a boy or a grown man?
A. He was a grown man.
Q. What was he charged with?
A. I think—I am not sure, but if you will pardon me—I think he was charged with lewdness, and I will tell you who had him arrested.
Q. Never mind. I do not ask you who had him arrested. Answer my questions. It will take time enough, anyway.
A. All right.
Q. Did you go back and get that prisoner away from there?
A. Yes, sir.
Q. What time did you go back and get him?
A. In the afternoon.
Q. At what time?
A. I really couldn't say.

Q. Say as close as you can.
A. I don't know is as close as I can say.
Q. But it was somewhere after two o'clock?
A. It was somewhere in the late part of the afternoon.
Q. It was somewhere in the late part of the afternoon—either between 2 and 3 or 3 and 4?
A. I don't know whether it was or not.
Q. That is what you swore?
A. No; I didn't.
Q. You did not swear to that?
586 A. No, sir.
Q. All right. We will pass to something else. Did you take any other prisoner there besides this man charged with lewdness on that day?
A. No, sir. I went there and got a man, though.
Q. Who did you get?
A. I don't know his name.
Q. It was not the same man you put in that morning?
A. I got him out, and then another man.
Q. What was the name of the man you got out?
A. I don't know.
Q. Do you know what he was charged with?
A. I have forgotten.
Q. But you did get a man there?
A. I got two men.
Q. White or colored?
A. Colored.
Q. Both of them?
A. Both of them.
Q. Did you put anybody else in besides this one that you took there in the forenoon?
A. No, sir.
Q. Nobody else?
A. You see, this man—I didn't take nobody else there. I just took those men to trial, and when the trial was not ready I took them back.
Q. You did not put anybody else in there that day besides the one you put in in the forenoon?
A. In the forenoon I took Charley up and I went up and
587 get him and brought him out, and taken him back.
Q. So his name was Charley, was it?
A. Yes, sir.
Q. Why did you not tell us that a while ago?
A. I just thought of the name. His name was Charley something. I may think of the other part of his name.
Q. Try.
A. I went and got him.
Q. You went and got Charley?
A. And brought him out. They wasn't ready for the trial, and I took him back.

Q. Did you leave him there that last time?
A. Yes, sir.
Q. Did you get him out any more that day?
A. I got him out that evening.
Q. At what time?
A. I don't know.
Q. Was it late or early?
A. It was late in the evening.
Q. So that would make three trips that you made?
A. I mean that I made three trips with that man, but not to put in three men.
Q. You made three trips to the jail?
A. Yes; two or three.
Q. You said a while ago that you could not remember.
A. I said I didn't put in over those two men.
Q. Did I not try for a considerable length of time to get you to tell how many times you were at the jail?
A. I was there several times.
588 Q. Were you there more than two times?
A. In the evening?
Q. Morning or evening; take your choice.
A. All day, I was there two or three times.
Q. Were you there two or three times?
A. I think I was there three times.
Q. Were you not there four times?
A. With what I went back in the afternoon or night I was.
Q. With what you went there at night you were there four times?
A. Yes, sir.
Q. During the day how many prisoners did you lodge in jail?
A. I taken those two prisoners out and lodged them back.
Q. You took Charley there, and back, and then back again?
A. Then back.
Q. That is one. Then those two prisoners you took out and returned to the jail that day.
A. Charley was one of the two.
Q. What was the other one's name?
A. I don't know.
Q. Have you remembered yet the last name of Charley?
A. No, sir. The squire has it on his record.
Q. What was his name?
A. I don't know, sir. I done forget it.
Q. Did you arrest him?
589 A. I did.
Q. Did you swear out the warrant for him?
A. No, sir.
Q. Who swore out the warrant for him?
A. A cripple man that used to be at the Erlanger Hospital, by the name of Connor was the one that had me arrest him, up over his saloon.

Q. He had him arrested over his saloon?
A. Yes, sir.
Q. A crippled man that worked at the Erlanger Hospital?
A. He used to. He had a saloon at that time. Understand, I arrested him before this day.
Q. I understand. How many of them did you arrest?
A. Two.
Q. That is, Charley and another man?
A. No; Charley and a woman.
Q. Was this other person you went after a female prisoner—a woman?
A. A man.
Q. You did not get that woman out of jail that day, did you?
A. I didn't put her in jail.
Q. She was not put in jail at all, but Charley was?
A. Charley was.
Q. That day?
A. Yes, sir; but not the day the lynching was done.
Q. You put him in several days before?
590 A. No, not several days before. The day before, or the day before that; I don't know which; but the trial was set for that identical day.
Q. The trial was set for that identical day, before Squire Ware?
A. Yes, sir.
Q. You went up and got him and took him before Squire Ware, and lodged him back in the jail?
A. I got him twice that day.
Q. You got him twice that day out of the jail?
A. Yes, sir.
Q. And another man. What other man was it that you got out of jail?
A. I don't know—another boy.
Q. Was he also in there awaiting trial?
A. Yes, sir.
Q. Before whom; before the justice of the peace?
A. I think before Squire Nelson.
Q. Squire Nelson is a colored man.
A. Yes, sir.
Q. A colored justice of the peace?
A. Yes, sir.
Q. General Nelson?
A. Yes, sir.
Q. Squire General Nelson?
A. Yes, sir.
Q. You took him out, and took him before Squire Nelson, and then lodged him back in jail?
A. Yes, and he stayed there.
591 Q. That same day?
A. Yes, sir.

Q. Did you get anybody else out that day?
A. No, sir. I brought Charley out later in the evening again.
Q. What did you bring him out that time for?
A. They wasn't ready for trial the first time I brought him.
Q. The case was not ready for trial, and you brought him out the second time that day, and put him back?
A. Yes, sir.
Q. That same evening. Did you take any other prisoners, or any other arrests there that day at all, yourself?
A. Only just those two men.
Q. Except these men you have named—any others?
A. No, sir.
Q. Did you have any other transaction with the jail there that day at all?
A. I carried Charley back that night.
Q. I understand. You have told us that. Any others besides that?
A. I carried this boy back.
Q. What boy?
A. Another boy I carried out with Charley that evening.
Q. Do you remember what he was charged with?
A. No, sir.
Q. He is the man who had the trial before General Nelson?
592 A. Yes, sir.
Q. Were there any other prisoners that you had any transaction with that day?
A. I think I worked with those two men pretty much all day.
Q. They gave you a pretty good day's work?
A. Yes, sir; going back and forth. They was trying to get the matter up, but didn't get it up, and I brought them out and carried them back.
Q. Your best judgment is that you were not there at 12 o'clock, then?
A. I don't know.
Q. I am asking you. Your best judgment is that you were not there at 12 o'clock?
A. I mought have been. I don't know.
Q. You "mought" have been, or you "mought" not have been. What time was it that you saw this shifting of prisoners that you told Mr. Sanford about?
A. Some time in the afternoon.
Q. What time in the afternoon?
A. I don't know. I kept no record of it.
Q. Give us your best judgment about it.
A. I couldn't do it, because I kept no record of it. I didn't think I would ever have to testify about it.
Q. It did not happen about 12 o'clock though, did it?
A. I wouldn't swear to that.
Q. You would not swear that it did, or did not, happen about 12 o'clock?

A. I wouldn't swear.

593 Q. You saw it, did you not?

A. It was in the afternoon, is all I know.

Q. Do you call that afternoon, after 12 o'clock?

A. Yes, sir.

Q. Then what do you mean by saying that you would not swear it was after 12 o'clock, when you sit there and do swear it was?

A. I meant that I wouldn't swear definitely what hour it was.

Q. You swear definitely it was in the afternoon; but you will not swear it was after 12 o'clock.

A. I swear it was not 12 o'clock, exactly, but it was after.

Q. It was not at 12 o'clock, or about 12 o'clock?

A. No, sir.

Q. About what time was it?

A. I don't know.

Q. If you have stated about what time it was, you have stated something that you did not know?

A. I have not stated it.

Q. But it was in the afternoon?

A. It was in the afternoon.

Q. Who was changing the prisoners?

A. Captain Brown and perhaps somebody else.

Q. Tell us what you mean. What do you mean by "perhaps somebody else?" Was there somebody else with him?

A. Somebody else with him.

Q. Who was it?

A. I don't know.

594 Q. Was it one of the deputies?

A. I know it was a colored man helping him.

Q. Was it a trusty there in the jail?

A. I don't know.

Q. You were there every day, you say, about?

A. No, sir.

Q. Had you ever seen this man before?

A. I didn't say I went there every day.

Q. Had you seen this man before?

A. Yes, sir.

Q. Was he frequently at the jail?

A. Yes, sir.

Q. You did not know him then, the man who was helping to transfer the prisoners?

A. No, sir; I didn't know him.

The COMMISSIONER. Take your hand away from your mouth. The stenographer can not hear you.

The WITNESS. Excuse me. I won't do that any more.

By Mr. PRITCHARD:

Q. What prisoners did you see transferred?

A. Why, I saw them go up with Ed Johnson.

Q. You saw them go up with Ed Johnson?

A. Yes, sir.
Q. Where from.
A. I saw them go up the stairway.
Q. Where were they taking him from?
A. From down this way somewhere. I don't know where they got him out of, whether they got him out of the lower
595 cell or the lobby cell.
Q. He was taking him from the lower floor to the upper floor?
A. To the upper floor.
Q. Who else did you see transferred?
A. I started to tell you that, and you wouldn't let me.
Q. Never mind about that. I ask you the question, who else did you see transferred, if anybody?
A. I didn't see the others, but I was told about them.
Q. I am not asking what you were told.
A. I would have told it, but you wouldn't let me.
Q. You would tell almost anything if I would let you.
A. No, I wouldn't.
Q. Who else was transferred?
A. I got there about the time they were going up with Ed Johnson, and I asked who was going up there——
Q. Never mind. Did you see anybody else transferred besides Ed Johnson?
A. I did not. I seen them going up with Ed.
Q. You saw them going up with Ed Johnson, and that is all you saw of the transfer of prisoners?
A. I know——
Q. Never mind what you know. Answer the question.
A. I know what somebody told me.
Q. The only transfer of prisoners that you saw was the taking of Ed Johnson upstairs?
596 A. Yes, sir.
Q. That is all you saw?
A. That is all I saw of that transaction.
Q. That is all you saw of any transfer of prisoners?
A. Yes.
Q. That is all you saw?
A. The other part I was told about.
Q. You did not see anything else?
A. No; I didn't see the others took up. I talked with some of them——
Q. You do not know anything of any transfer of the prisoners except something you have heard?
A. I talked with the prisoners themselves.
Q. Never mind who you talked with. Answer the question. Do you know anything about the transfer of any prisoners except what you have heard?

A. No, sir; I don't.

Q. Now, from the time you took your position on the steps there at the corner of Walnut and Sixth streets, did you change your position or did you stay there all the time until after the mob passed?

A. I stayed there until the mob entirely passed.

Q. When did you take your position there at that place?

A. When I heard the voice say, "By God, we have got him, boys. Clear the way; I'm coming down."

597 Q. Where were you at the time you heard the voice say "By God, we have got him, boys. Clear the way; I'm coming down?"

A. At the north side of the west steps, that goes over to Captain Shipp's office.

Q. On the north side of that?

A. Yes.

Q. When you heard that voice you were——

A. Standing right by the big tree.

Q. When you heard the voice you went inside of the court-house yard?

A. No; I was inside already.

Q. You did not go out on the street, but went to the steps at the corner?

A. Yes, sir.

Q. At Walnut street and Sixth street?

A. Yes, sir.

Q. And you did not change your position from that time until after the crowd had gone on with Johnson?

A. I did not.

Q. There is no gate there at that place, is there?

A. I disremember. It was open, I know, if there was.

Q. There never was a gate there, was there?

A. I don't know.

Q. If there was any gate there you do not know it?

A. If there was, I didn't pay any attention to it.

Q. There are stone steps there?

A. There are stone steps there; yes, sir.

Q. Did you sit down or stand up?

598 A. I sit down.

Q. Where did you sit?

A. Right up against the west wall.

Q. Right up against the west wall?

A. Yes, sir; as close as I could get.

Q. What step did you sit on?

A. The second step from the top.

Q. The second step from the top?

A. Yes, sir.

Q. You sat close against the wall?

A. Yes, sir; and bent my head over this way (indicating).

Q. There is a big pilaster there?

A. No pilaster at all.
Q. There is no pilaster there?
A. I say I was no pilaster.
Q. You are not a pilaster. That is one of the things you are not?
A. I hid myself, because I knew if they saw me there would be some more trouble. Somebody might do something to make me shoot at the crowd, and shoot somebody.
Q. You were armed?
A. I know, but I wasn't going to tackle that big crowd by myself.
Q. Is there a stone column with a big rock on top of it at the corner of the steps there?
A. You have got me there. I don't know whether there is or not. I never paid any attention to that.
599 Q. It was not new to you—that entrance to that courthouse yard, was it?
A. No, sir.
Q. You are familiar with it. It has been there for years, just like it was that night?
A. Yes; I was here when they were building it. I was not living here, but I was coming here off and on in 1878 when they was building it.
Mr. PRITCHARD. That is all I want to ask him.

By Mr. DANIELS:

Q. Joe, I understood you to say that you were sitting on the stone steps, at the northwest corner of the court-house yard when you think you saw Mr. Marquette go by with other people?
A. Yes, sir.
Q. I believe you also state that some four or five crowds went along up towards the bridge on that night?
A. Yes, sir.
Q. There were about twenty-five, you think, in the first crowd?
A. Twenty-five or thirty—that is the way I stated it—in the first crowd; somewheres along there. I didn't count them, but there was twenty-five or thirty. It is just guesswork of the crowd, you know.
Q. The other crowd that you saw were a considerable distance behind the first crowd, were they?
600 A. They were behind the first crowd just a little distance. I never paid any attention to that; but I know they were just a little distance behind the first crowd.
Q. About how many crowds altogether did you see behind the first crowd?
A. Some five or six little crowds, along, you know. They were just in bunches. That is, as they would come up they would bunch together, and they would go on, and the others would go on.
Q. Marquette was in what crowd?
A. It appeared to me—I wouldn't swear exactly—but he was somewhere in the hind crowd, or the next to the hind crowd. I knew him. What first attracted my attention is, I mean, by his talk, and

I knowed him by his talking; and I says, "Oh, gracious," I said to myself, "Mr. Marquette wouldn't go into a thing like that, surely."

Q. Well, he was in the fourth or fifth crowd behind Johnson, was he not?

A. I don't know whether it was the fourth or the fifth, but he was in one of the hind crowds, either the last one or the next to the last one. I never paid any attention to that.

Q. He was not with the crowd, you say, that had Johnson?

A. No; he wasn't with the first crowd. There was only two men in the first crowd that I knew, as I first stated, in the first crowd; but there was several along in the back crowd that I knew.

Q. You say there were about five different crowds?

A. Five or six; somewheres along there.

601 Q. And you think Marquette was in about the last crowd, or the next to the last crowd?

A. I think he was in the next to the last crowd, because the last crowd was mighty near as big as the first crowd. The last crowd that passed me came up from Seventh street, most of them.

Q. That would be the fifth crowd, then, or about the fifth crowd?

A. I don't know whether it was the fifth, Mr. Daniels. I wouldn't swear it was just the fifth crowd.

Q. It was next to the last crowd that you saw Marquette in?

A. It was next to the last crowd, or the crowd in there. It was along back behind. I know he was back behind.

Q. That was about how far? 100 yards behind the first crowd?

A. It might have been about fifty yards.

Q. About fifty yards behind the first crowd?

A. Yes, sir.

Q. That is all you saw of Marquette?

A. That is all. I never seen him do anything. I wouldn't swear anything to hurt a man or kill man. I am just swearing to what I saw; and that I saw, I swear it, and that I didn't see, of course, I ain't going to swear it.

Q. You identified him, you think, by his voice?

A. I knew his voice, and I looked at him when he got up there.

602 Q. All right.

A. I knew his voice. He used to speak right down in this court-house, and if there was one, two or three men *men* would speak, whenever he would speak I could tell you his voice.

Q. All right.

A. Right now, if you want to go through that test, I will tell you his voice.

Q. Life is too short to go into tests of that kind.

A. I am just showing you that I knew him by his voice. If you will go through that test I will show you that I did know. I am positive about knowing him. I wouldn't swear anything detrimental to him or swear anything that hurt him. I don't know whether he put his hands on Johnson or not.

Q. You never saw him near Johnson at all, did you?
A. No, sir; I did not.
Mr. DANIELS. All right.

By Mr. SHEPHERD:

Q. What time of night was it that the lynchers came out of the jail with Johnson?
A. I was so mad over the matter I didn't pay exactly any attention, judge.
Q. Well, about?
A. I think somewhere between 9 and 10 o'clock—near that time.
Q. You were standing——

603 A. I was standing by that big tree, right as you go out the west gate. Right as you go out the west gate, by Captain Shipp's office, over to the jail.

Q. You were some seventy-five feet away from the men when they came out of the jail with the prisoner?
A. Further than that, because when I heard them say, "Boys, clear the way, I have got him," I made my shoot to that gate gown there; but they came closer than that to me when they came by me going up Walnut street.
Q. When you first saw the men come out of the jail with the prisoner Johnson, you recognized Bart Justice, did you?
A. I heard Bart Justice before he came out, and recognized him right after he came out. I watched him.
Q. You heard his voice, and when he got opposite to you you saw him?
A. I saw him.
Q. You know him very well, do you not?
A. Yes, sir.
Q. Justice is a large man, about six feet two inches tall, is he not?
A. I expect he is.
Q. And a very strong man?
A. He is right much of a man.
Q. You would recognize him in almost any crowd?
A. Oh, yes. He is a good man, a stout man. I know Justice well.
Q. You are absolutely positive that Justice was there, too?

604 A. Oh, yes; he was there. There is no mistake about that.

Q. You are just as sure about that as you are of anything else you have testified to in this case?
A. If Justice wasn't there, there ain't no Christ in heaven.
Q. The defendant John Jones was there, too, was he not?
A. Yes, sir. I don't know whether John took any part in the lynching or not.
Mr. SHEPHERD. I wish the defendant John Jones would come around and let the witness look at him.
The WITNESS. Have you got him here?
Mr. SHEPHERD. Well, we will see.

(The defendant John Jones walked to the front of the court room and stood before the witness.)

The WITNESS. No; that ain't the man. He ain't as old a man as that. That is a man about forty-five or fifty years old. I tell you this Johnny Jones is 28 or 30 years old.

Mr. SHEPHERD. Let the stenographer note on the record that the defendant John Jones stood up, and that the witness said he was not the man.

The WITNESS. I don't know this man. This Jones I know, I know personally. This is not the Jones.

By Mr. SHEPHERD:

Q. The defendant Nick Nolan was not in the first crowd, you say?

A. No, sir; Nick wasn't in the first crowd. If I mistake not, I think Nick was in the back crowd.

605 Q. What sort of a man is Nick? Can you give a description of him?

A. Well, Nick—I take him to be a young Irishman, a nice-looking young fellow.

Q. He is a good, big, portly young fellow?

A. Yes. He is not such a big fellow. He has got one of these round noses, you know—long noses. I don't mean to flatter him, or nothing like that, but you know he has got one of these long noses.

Q. Something like mine?

A. Yes, about like yours.

Q. You did not hear Nick say a single word?

A. Not a word.

Q. You think he was in the rear crowd?

A. Yes, sir; he was there. Whether he done anything I don't know, but he was there.

Q. There were several lookers-on that did not take any part in the mob?

A. I wouldn't swear that.

Q. But there were several people in the crowd who might have been lookers-on?

A. Yes, sir.

Q. The only persons you know, who were actually engaged in the lynching, were in the first crowd that had Johnson?

A. Yes, sir; that is the crowd I looked at.

Mr. LYNCH. I represent Mr. Clark, one of the defendants,
606 specially, and have just got in, having been unavoidably detained in court at Winchester. I have just learned of the evidence of this witness against Mr. Clark. It was a great surprise to us. We had assumed that Mr. Clark was only made a defendant because he had been a deputy sheriff. We cannot intelligently cross-examine with reference to Mr. Clark until we shall have read the evidence, and we ask the court to permit us to recall him when we come to introduce our evidence.

The COMMISSIONER. Certainly.

Mr. SANFORD. Is there any further cross-examination?

Mr. COOKE. Just a minute.

Mr. SHEPHERD. There is one other question I will ask the witness.

By Mr. SHEPHERD:

Q. Was the constable, Will Allen, present with you in the courthouse at the time the mob came out of the jail with Johnson?

A. No, sir; he was there at the jail himself.

Q. He was over at the jail?

A. Yes, sir.

Mr. COOKE. I think we are through, although we may want to recall this witness for further cross-examination.

Mr. SANFORD. When that comes up we will take up that question.

Mr. COOKE. We do not want him discharged.

607 Redirect examination by Mr. SANFORD:

Q. Joe, the man that paid your railway fare down from St. Louis—was that the United States marshal that summoned you, or was it some other man?

A. It was the United States marshal that summoned me.

Q. Did he tell you anything about whether that would be taken out of your witness fees?

A. Yes, sir; he did. He told me that it would be charged up to me.

Q. Were you guilty of any of these things that Mr. Pritchard has examined you about?

A. Not a one.

Q. Were you ever found guilty of one of them?

A. Not one. I was not found guilty of one of them. This last one he asked about wasn't anything but a civil action.

Q. Have you ever been found guilty of any of the offenses?

A. No, sir; even my wife couldn't find me guilty about anything—any woman.

Q. I am asking about those matters in the indictment.

A. No, sir; I am not guilty of any of them. I never have been found guilty of any of them. Another thing. Judge McReynolds wouldn't discharge me in no case on my merits, just because he liked me. If there had been anything in it he would never have discharged me. He is a straight man, as a judge, so far as I am concerned.

608 Q. In all those charges made against you, you have been acquitted, either by discharge or dismissal?

A. Yes, sir.

Q. They originally charged what you call—what is it?

A. Elooting the county.

Q. Was that with reference to some costs that had been taxed up that ought not to have been taxed up?

A. Yes, sir.

Q. Dismissed cases?

A. Yes, sir. That was in the first three months I was in office.

Q. Who certified those cases—the justice of the peace?

A. The justice of the peace certified to them.

Q. Did you have anything to do with certifying to them?

A. Not one iota.

Q. When you were informed that they had been illegally collected or paid, what did you do about it?

A. I refunded that money, $44 and some cents. I have a record of it at home. He said $400, but I only refunded $44 and some cents. They have it $400, and that is why I say that paper was reproduced.

Q. This little bunch that you say Nick Nolan was in—the good-looking young fellow—how far was it from the crowd that had Ed. Johnson?

A. As close as I can come at it, I think there were two or three crowds between them.

Q. You think there were two or three crowds between them?

609 A. Yes, sir.

Q. These indictments against you in reference to county money—how many years ago was that?

A. The first two years, sir, that I was elected constable.

Q. Do you remember the year? Was it 1901?

A. I don't know, sir.

Q. Was it several years ago?

A. It was several years ago.

Q. Have you ever been reelected since that time?

A. I have been reelected since that time, since that action he read against me.

Recross examination by Mr. COOKE:

Q. They thought more of you out in the tenth civil district after you had been indicted?

A. The white people here in the city think a lot of me. Any white man that knew me wouldn't swear against me. All of you know I am straight.

Q. Joe, Ross is the man who certified to those warrants?

A. Yes, sir; he is the man.

Q. They were warrants that stated that he had sentenced or sent to the workhouse a certain defendant, when, as a matter of fact, he had not sentenced or sent these defendants to the workhouse?

610 A. I will state how it was, as near as I can get at it. There were people that were arrested and turned loose, you know, on their own recognizances. You see, that was the first year I was elected, the first three months I was elected. Mr. Early there was my attorney in the case. They didn't come in and pay these costs. He certified to these cost bills, and sent them up and got pay for them. They had been doing that for years until you (Mr. Cooke) got to be county attorney and broke it all up. I give you credit for that.

Q. What I ask is this. Ross is the man that certified that he had sent the parties to the workhouse when he never had?

A. He never had.

Q. What you did was to sign warrants as if you had taken them to the workhouse and draw the money?

A. I did not.

Q. How did you get the money?

A. I signed the warrants when I first arrested them, I tell you. Just before the revenue commissioner would come around he would certify to these cost bills, that all these people had gone to the workhouse. He signed my name to the warrants. All the justices of the peace did.

Q. You did not sign your name to the warrants?

A. I did not sign my name to one of the workhouse bills that they have in the charge there. I signed my name to the original warrant when I first made the arrest and carried the prisoner in. I had no more to do with it. It is just like this man in St. Louis serving
611 the subpœna on me and making his return. He served the subpœna on me and made his return. That is the way I done when I arrested these people. After this, just before the court set, when the revenue commissioner came around was when he signed all the bills, and he signed my name to these bills. I had nothing to do with it. I never signed a bill of costs in my life.

Q. Would not your name be signed on the same paper? The original warrant and the bill of costs was all on the same paper, was it not?

A. The workhouse bill was; but I didn't sign my name on the workhouse bill.

Q. You signed your name to the original warrant?

A. I signed my name to the original warrant when I would first make the arrest.

Q. It was on the paper that was certified to the county commissioner by Ross.

A. Yes, sir.

Q. And that was signed to the cost bill on the same paper.

A. He signed that.

Q. How was the county to pay you those costs when your actual signature was on one place on the warrant and a forged signature on another place?

A. No, not on the warrant. It is on the bill.

Q. That was on the back of the warrant?

A. But there is a workhouse bill made out.

Q. You signed your name for the county warrant you got?
612 A. I signed my name when I arrested the people, for every county warrant, but I didn't tell him to signed these papers up as if they had been sent to the work-house.

Q. You and Ross did a big business on Ninth street?

A. No, sir; we didn't do but a little. I only worked with him a few months, until you had him arrested. We didn't do but a little business.

Mr. Cooke. That is all.

Mr. SANFORD. You can go for the present. We may want to recall you.

The WITNESS. Yes, sir.

Mr. SANFORD. Have you that stipulation about the facts, that we spoke of yesterday? Has that been found?

Mr. PRITCHARD. I turned it over to Judge Shepherd, as I wrote you.

Mr. SANFORD. Yes; you wrote me at the time; Judge Shepherd says he signed it and handed it to somebody else.

Mr. PRITCHARD. What became of it?

Mr. SHEPHERD. I do not know. I signed it. We will look into it.

Mr. PRITCHARD. I turned it over to Judge Shepherd with the request that it be signed by all the counsel. I have not seen it from that day to this. Have you a copy of it? If you have we will sign it again.

Mr. SANFORD. Then we will just agree that when that can be found it may be put in the record; or a copy may be signed and introduced in the record.

Mr. PRITCHARD. Have you a copy of it?

613 Mr. SANFORD. I have not.

The COMMISSIONER. There is a copy in the record.

Mr. SANFORD. We will get it, and if we can not find the original we will sign it.

Mr. PRITCHARD. I think we had better get it and sign it now.

The COMMISSIONER. I think there is a copy in the judge's chamber. I saw it a while ago. I will get it.

Mr. SHEPHERD. All I know about it is just the conversation I heard between you and my partner. He said that it was signed up in our office; and I think that is right.

Mr. SANFORD. With that the Government rests.

Mr. SHEPHERD. Mr. Sanford, I desire to cross-examine Squire A. J. Ware on a single point, but I find he is not here now. I will just introduce him as my witness when we come to it.

Mr. SANFORD. All right.

Mr. SHEPHERD. It will probably not be strictly cross-examination, anyhow.

The COMMISSIONER. Here is the stipulation I referred to.

Mr. SANFORD. That is the original. We made some few little corrections.

Mr. CLIFT. If we do not find the original, we will correct that and sign it.

Mr. PRITCHARD. Before the Government closes, as we have had some verbal changes, I want to see the signed paper.

Mr. SHEPHERD. As soon as I can get access to my partner I will look it up. He is out this afternoon.

614 Mr. SANFORD. With that I am through.

The COMMISSIONER. This stipulation is in the corrected form. It is so stated in the record. Here is the record:

"Mr. SANFORD. Mr. Head suggests that he has not seen this stipulation. I thought it had been shown to all of the counsel for the

defendants. It may be proper to read the stipulation, and if there is any objection to it, the Government would like to know it now.

"Mr. HARMON. That will be the quickest way.

"Mr. HEAD. I expect it had better be read, and if there is any objection let it be known now.

"Mr. SANFORD. There are some corrections that have only been made orally, and I will read the stipulation in the corrected form."

Then follows the stipulation.

Mr. PRITCHARD. My impression is that there were some changes made subsequent to that; and that Mr. Sanford sent the paper after he had gone to Washington.

Mr. SANFORD. No; I left it with Mr. Cooke.

Mr. COOKE. I turned it over to Mr. Pritchard, and he in turn gave it to Mr. Shepherd.

Mr. PRITCHARD. I wrote you, Mr. Sanford, that I had signed it and turned it over.

Mr. SANFORD. I recollect that distinctly. Do you want to examine any witnesses this afternoon?

615 Mr. SHEPHERD. I have one case that I can get through very quickly, and will take that up right now.

Mr. SANFORD. Suppose we do that, and get the other paper by the morning, and then we can all sign it.

Mr. SHEPHERD. I will take up the case of Alfred Handman.

Testimony on behalf of the defendant, Alfred Handman.

Dr. A. W. BOYD, a witness produced on behalf of the defendant Alfred Handman, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Dr. Boyd, I will ask you to state if you are acquainted with the witness J. M. Stonecipher, heretofore examined in this case?

A. I am; yes, sir.

Q. How long have you known him, Doctor?

A. I have known him since he was a boy. In fact he went to school with me. I was unfortunate enough to be a school teacher when I was a young fellow.

Q. I will ask you to state whether you knew him when he lived in the vicinity of Cohutta, Georgia?

A. Yes, sir.

Q. State whether or not you have known him since he has lived in Chattanooga.

A. Yes, sir.

616 Q. I will ask you to state whether or not you are acquainted with his general reputation, both in the neighborhood of Cohutta, Georgia, and in Chattanooga, and in this vicinity.

A. Yes, sir.

Q. I will ask you if you are acquainted with his general reputation for truth and veracity?

A. I am.

Q. Is it good or bad?

A. It is not good; it is bad.

Q. From that reputation, would you give him credit on his oath?

A. I would not.

Cross-examination by Mr. SANFORD:

Q. What is your name? I did not catch it.

A. Boyd.

Q. And your occupation?

A. Physician.

Q. Living here?

A. Yes, sir.

Q. How long have you been living here?

A. Twenty years.

Q. When did you know Mr. Stonecipher in Cohutta?

A. I knew him before I came here.

Q. Twenty years ago?

A. Yes, sir.

617 Q. Have you been living in Cohutta since that time?

A. No, sir; I have been living here since that time. He has been living here part of the time.

Q. How long has he been living here?

A. Well, he has lived here off and on for fifteen years. He would move away and back again.

Q. How often have you seen him?

A. Oh, I have practiced medicine for him almost ever since he has been living here.

Q. Does he owe you anything now?

A. I think not.

Q. You have not any disputed bill with him?

A. No, sir.

Q. Have you got one with his brother?

A. No, sir; his brother is an honorable gentleman.

Q. You have not any dispute with his brother about a doctor's bill?

A. None whatever. I say his brother is an honorable gentleman.

Q. I did not ask you that. His brother has nothing to do with this case that I am aware of. How often do you see him outside of when you practice in his family?

A. I saw him to-day on the street and spoke to him.

Q. You have the same associates? You know the people he associates with?

A. No, sir. I do know people he associates with, yes, sir; he is not an associate of mine, however.

618 Redirect examination by Mr. PRITCHARD:

Q. How long did you say you lived in Chattanooga?

A. Twenty years.

Q. You have been in active practice here in the city?
A. I have.
Q. You have a pretty extensive acquaintance in the city of Chattanooga?
A. I have.
Q. Do you know Captain J. F. Shipp?
A. I do.
Q. How long have you known him?
A. Twenty years.
Q. Have you ever lived as a neighbor to him?
A. Well, practically so, yes; within a few blocks.
Q. Have you known him intimately and well for twenty years?
A. I have.
Q. Do you know his standing in the community?
A. I do.
Q. Do you know what his general reputation is in the community?
A. Yes, sir.
Q. I will ask you whether or not that general reputation in every respect is good, or in any respect bad?
A. It is good. It is in no respect bad.

619 Q. I will ask you whether or not his reputation is or is not that of a man on the side of law and peace and order, and whether he stands for the preservation of peace, law, and order?

Mr. SANFORD. I object to any testimony as to reputation other than the general reputation of the defendant, as any specific reputation on a specific point is incompetent. I also desire to object to the form of the question as leading.

The COMMISSIONER. The stenographer will note the objection.

Mr. PRITCHARD. You object to the form of the question?

Mr. SANFORD. Yes, as leading.

Mr. PRITCHARD. Let the stenographer read the question and see if it is leading.

The stenographer read the pending question, as follows:

"Q. I will ask you whether or not his reputation is or is not that of a man on the side of law and peace and order, and whether he stands for the preservation of peace, law, and order?"

Mr. PRITCHARD. That is not leading. Answer my question, please.

Mr. SANFORD. The Supreme Court may have the last word, however.

Mr. PRITCHARD. I guess it will; but I am willing to stand on that question.

The WITNESS. I will say that it is.

By Mr. PRITCHARD:

Q. You say it is what?
A. I say he is on the side of peace and order.

620 Q. Were you a resident, and engaged in the practice of your profession in Chattanooga, during the time covered by the

period from the time of the alleged rape of the young woman up here at Forest Hill Cemetery, and the actual lynching of the alleged rapist, Ed. Johnson?

A. Yes, sir.

Q. Did you then know, and are you capable of stating, the public sentiment during that period? I am not asking what it was, but whether you knew the sentiment of the community. Do not state what it was until I get to it. You may say yes or no to that.

A. Yes; in a general way.

Q. In a general way?

A. Yes, sir.

Q. Now, Doctor, let us go back to the time after this rape occurred. You heard of the rape?

A. Yes, sir.

Q. I will ask you to state whether or not that created a sentiment in the community, and whether it was a sentiment of abhorrence for the crime?

A. It did.

Q. About the time of this first attempt to lynch Ed. Johnson—you remember about that? You remember there was an occurrence when the mob was repelled and the man was not lynched, or when they went away?

A. Yes.

Q. From that period of time, and up to the time of the actual lynching, I will ask you whether or not the public excitement had abated?

621 A. Absolutely.

Q. Had it or not?

A. Absolutely; yes, sir.

Q. I will ask you whether or not there was anything in the condition, or in the public sentiment, as you knew it and as you heard it expressed at the time of Johnson's actual lynching, that would lead you or any other intelligent person, so far as your knowledge would extend, to suspect or believe that there was any cause of apprehension of the lynching of Johnson at the time he was lynched?

A. I can answer for myself that there was not a thought in my mind as to any danger to Johnson at the time he was lynched.

Mr. SANFORD. I desire to note an objection to testimony as to the witness' own personal opinion.

The COMMISSIONER. The stenographer will note the objection.

By Mr. PRITCHARD:

Q. I will ask you if you, as a citizen mingling with the people, knew of anything that led you, or ought to have led you, to suspect that there was danger of his being lynched at the time he was lynched?

A. Not at the time he was lynched. I had no thought of his being lynched.

Mr. SANFORD. I desire to note the same objection to the witness' repeated statements as to his own opinion.

The COMMISSIONER. The stenographer will note the objection.

622 By Mr. PRITCHARD:

Q. I will ask you whether or not you heard of any expression of opinion, or of any act that would lead you, or that did lead you to think there was any danger of any lynching, or any danger to be apprehended along that line?

A. Not a thing.

Q. I will ask you whether or not the actual lynching of Ed. Johnson came as a very great surprise to the people of Chattanooga?

Mr. SANFORD. I desire to object to that question, as distinctly suggestive in its form.

The WITNESS. I can only answer for myself, that it came to me as a surprise at the time. I know I was surprised when I read it in the paper, that he was lynched, at the time he was. It would have been no surprise at first, however.

Mr. SANFORD. I desire to note the same objection.

By Mr. PRITCHARD:

Q. You were mingling with your fellow citizens during all that period, were you?

A. Yes, sir.

Q. And were practicing your profession along the rich and the poor, the high and the low, all over the community?

A. Yes, sir.

Q. You say you have a large and active practice?

A. Yes, I have enough to keep me busy.

Recross-examination by Mr. SANFORD:

623 Q. Is your practice among the law-abiding class or the lawless and disorderly class?

A. I practice for both.

Mr. SANFORD. That is all.

The WITNESS. I would be glad to state my reasons for answering the question as I did in regard to Mr. Stonecipher. I would like to state why I did.

Mr. SANFORD. I have not asked you that, Doctor.

By Mr. HOOD:

Q. You say you are acquainted with the general character of Stonecipher down in Georgia. I will ask you whether or not you were raised in the same neighborhood?

A. Yes, sir.

Mr. SHEPHERD. I have asked about that.

* * * * * * *

652 A. N. SLOAN, a witness produced on behalf of the defendant, Alfred Handman, having been first duly sworn by the commisioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. How long have you resided in the city of Chattanooga, Mr. Sloan?

A. Nearly thirty years.

Q. Are you a member of the board of public works of this city?

A. I am.

Q. I will ask you to state whether or not you are acquainted with John N. Stonecipher, a witness heretofore examined in this case?

A. Yes, sir; I am acquainted with a John N. Stonecipher.

Q. I will ask you to state whether or not you are acquainted with his general reputation and standing in the community where he lives?

653 A. I will state that my acquaintance with him is of rather short duration, possibly less than a year; but since I have known him——

Q. I am inquiring about his reputation.

A. Yes, sir. I have known of him very well since that time.

Q. State whether or not his general reputation in the community is good or bad.

A. I would call it bad.

Q. I will ask you to state whether or not, from his general reputation, you would give him faith and credit on his oath as a witness?

A. I would not.

Cross-examination by Mr. PENLAND:

Q. Have you had any trouble with Mr. Stonecipher of any kind, Mr. Sloan?

A. No, sir; no trouble whatever.

Q. Any lawsuits?

A. No, sir.

Q. What is your business?

A. Insurance.

Q. Did you ever have any insurance work with him?

A. Yes, sir.

Q. Did you ever have any dispute or disagreement over it?

A. No, sir.

Q. You never did.

654 A. No, sir. One of the companies that I represent paid him a claim for a loss, and that was really the only business transaction I have ever had with him.

Q. And you have only known him for about a year?

A. I should say a year. I have known of him longer than that, but I have only known him personally I should say a year.

Redirect examination by Mr. PRITCHARD:

Q. How long did you say you had lived in the city of Chattanooga?

A. Nearly 30 years.

Q. And you are now in the insurance business?

A. Yes, sir.

Q. What business were you in before you went into the insurance business?

A. In the railroad business.

Q. What road were you connected with, and in what capacity?

A. I came here with the old East Tennessee, Virginia & Georgia. From that I went to the Cincinnati Southern; from that to the Western & Atlantic.

Q. Take the old East Tennessee and Georgia—in what capacity were you on that road?

A. I was in the freight department as a clerk in the office.

Q. What was the next road?

655 A. The next road was the Cincinnati Southern.

Q. In what capacity?

A. As distributing clerk in the general office.

Q. And the next road?

A. The next road was the Western & Atlantic.

Q. In what capacity?

A. As the general contracting agent here.

Q. And you followed that business until you went into the insurance business?

A. Yes, sir. From that road I went into the Chattanooga, Rome & Columbus as general freight and passenger agent, and stayed there until I quit railroading.

Q. You went then to what is now the Central of Georgia?

A. The Central of Georgia; yes, sir.

Q. It was then the Chattanooga, Rome & Columbus?

A. Yes, sir.

Q. You were in what capacity with that road?

A. General freight and passenger agent.

Q. And you say that you are now on the board of public works in this city?

A. Yes, sir.

Q. I will ask you whether you hold any official position with any church here?

A. Yes, sir; I am treasurer of the First Presbyterian Church.

Q. How long have you held that position?

A. I was assistant treasurer for some years, and I presume I have been treasurer about eight or ten years.

Q. That is Dr. Barton's church, is it?

656 A. Yes, sir; Dr. Barton's.

Q. I will ask you whether you have held any position with the Masonic fraternity in the State of Tennessee; and, if so, what?

A. Yes, sir; I have held every position, I believe.

Q. I will ask you if you have been Grand Master of the State?

A. Yes, sir.

Q. Of Tennessee?

A. Yes, sir.

Q. I will ask you whether or not you know the defendant Shipp, and, if so, how long you have known him?

A. I have known him ever since I came to Chattanooga. I believe that he was here when I came to Chattanooga. At any rate, my recollection is that he was here when I came to Chattanooga.

Q. Have you known him well?

A. I have lived neighbor to him for years and years.

Q. How long have you lived a neighbor to him?

A. Ever since I have been in Chattanooga.

Q. Thirty years?

A. Nearly thirty years; yes, sir.

Q. I will ask you whether or not——

A. Let me correct that statement. I say nearly thirty years. The exact time that I have been here is going on 29 years.

Q. I will ask you whether or not you know his general reputation in the community?

A. I think I do.

657 Q. And how long have you known his reputation?

A. Ever since I have known the man.

Q. I will ask you whether or not he has been a prominent man in the community, whose reputation was easily known and easily ascertained?

A. He has.

Q. I will ask you whether you have been brought in business contact and social relations with him during this long period?

A. In every relationship of life, I presume.

Q. Have you been brought in contact and relationship with those with whom he is associated?

A. Yes, sir.

Q. And his neighbors and those who know him?

A. Yes, sir.

Q. You say you know his reputation?

A. Yes, sir.

Q. Is that reputation good or bad?

A. It is good.

Q. I will ask you whether or not his reputation for peace and good order, and for being on the side of upholding law and good order, is good or bad?

A. It is good.

Mr. SANFORD. I desire to object to the testimony as to any particular element of the reputation other than the general reputation of the defendant.

The COMMISSIONER. Note the objection.

By Mr. PRITCHARD:

Q. From that general reputation, knowing him as you do,

658 would you believe that he would be party to a conspiracy to commit murder and lynching?

A. I do not.

Mr. SANFORD. I desire to object to the question and to the answer that may be given, on the ground that it is utterly and entirely irrelevant and incompetent.

The COMMISSIONER. Note the objection.

By Mr. PRITCHARD:

Q. You were living in Chattanooga at the time of this lynching, were you?

A. Yes, sir.

Q. And had been living there during all this period from the alleged raping of this young woman by Ed Johnson?

A. Yes, sir.

Q. I will ask you whether or not you were in such a position as to know the state of the public mind and sentiment during that period of time?

A. Yes, sir; my business keeps me in touch with the people very closely. I am out amongst them most of the time.

Q. Where is your office, Mr. Sloan?

A. It is in the Masonic Temple, corner of 7th and Cherry streets.

Q. How far is that from the county jail?

A. It is just diagonally through; it is a block and a half, I would say.

Q. Is the county jail in the next block?

A. Yes, sir.

Q. The county jail fronts toward the east, does it?

659 A. It fronts Walnut street on the east.

Q. It fronts east?

A. Yes, sir; it fronts east.

Q. And your office fronts north?

A. No; my office fronts the west.

Q. The building is on the corner?

A. Yes, sir. The Masonic Temple fronts the north, but my office itself fronts the west.

Q. I will ask you whether or not, at the time of this lynching, you knew of any condition of excitement that led you to believe or caused you to suspect there was any danger of the lynching of Ed Johnson?

Mr. SANFORD. I desire to object to that question and the answer that may be given. The witness's individual opinion is incompetent on that question.

The COMMISSIONER. Note the objection.

The WITNESS. Shall I answer the question?

Mr. PRITCHARD. Yes.

A. I knew of nothing that led me to believe that a lynching would occur. There was a general expression of disgust with the people in regard to the long delay when the bulletin was put out announcing that the Supreme Court had taken some action in the matter; but I heard nothing that led me to believe that he would be lynched.

By Mr. PRITCHARD:

Q. I will ask you whether or not you knew of the long-continued efforts and how long a period of time had been covered by the sheriff and by the people in the protecting of Ed Johnson against the
660 former efforts of the mob; whether you knew of those efforts?

A. Yes, sir; I knew the efforts that were being put forth to protect him.

Q. At the time of the unsuccessful attempt, some time before that, to lynch Johnson, was there much excitement then?

A. There was a good deal of excitement at that time. There were two murder cases on hand at that time, or two cases, a murder case and this case of rape, and the two had produced considerable excitement.

Q. To refresh your recollection I will ask you if there was not still another rape case of an orphan?

A. That is right. There was an attempt to assault a girl at the Orphan's Home, and this raping at St. Elmo, and the murder out here east of the ridge, near Chickamauga, all of which were on the public mind right at that time, and there was a good deal of excitement.

Q. Those crimes occurred close together, did they not?

A. Yes, sir; reasonably close. I do not remember the exact time between the commission of the crimes, but they were all in the public mind about the same time.

Q. But at the time of the actual lynching, state whether or not the excitement had entirely subsided.

A. So far as I know it had; yes, sir.

Q. State whether you saw anything or heard anything to cause you to know of any state of excitement or feeling.

A. I did not.

Mr. SANFORD. I desire to continue my objection as heretofore.
661 The COMMISSIONER. Note the objection.

Recross-examination by Mr. SANFORD:

Q. There had been a good deal of excitement, had there not, Mr. Sloan, since these matters came up?

A. Yes, sir. When the crimes were first committed there was a good deal of excitement.

Q. There was an attempt at lynching, which was put down either by the police or the militia, was there not?

A. There was an attempted assault on the jail at the start, and it was stopped by the interference of the officers; I don't know just in what regard.

Q. There was a great deal of public excitement about it?

A. Yes, sir; at that time.

Q. There was a great deal of indignation in reference to these horrible crimes that had been committed by somebody?

A. Yes, sir.

Q. And there was danger that the lawless element of the community would take matters into their hands and there would be a lynching?

A. Yes, sir.

Q. They had to take Johnson away from the city, did they not? They thought it prudent to take Johnson away from the city to get him away so that he would not be lynched?

662 A. He was taken out of the city by the sheriff, I presume, as a precautionary measure.

Q. Then they had a trial, did they not?

A. Yes, sir.

Q. And all during the time of this trial they had to put extra guards around the court house, and most stringent precautions were taken, were they not?

A. The court house was guarded so as to keep out the crowds that would want to go in to crowd the court room.

Q. Special deputies were sworn in?

A. That was my understanding; yes, sir.

Q. And then, after he was brought back to jail, they had extra guards at the jail right along, did they not?

A. I don't know about that, sir. I*d* they did I do not know it.

Q. Then he was convicted and it was thought that he would be executed, and the excitement was somewhat allayed then?

A. Yes, sir.

Q. Then was there not a new effort made to take his case up through the Federal court at Knoxville?

A. Yes, sir.

Q. And did not that arouse excitement again? Didn't they think that would bring about more delay?

A. I couldn't say that it aroused excitement. As expressed a while ago, there was more of a sentiment of disgust.

Q. Was not that sentiment apt to affect the lawless element of the community, excite their indignation, and get them into a con-

663 dition when they would break the law again, or try to break it?

A. I should say it was; yes, sir.

Q. Would it not be the natural result of what you call a feeling of disgust, that the lawless element of the city would try to take the law into its own hands?

A. Yes, sir; if they thought there was going to be unnecessary delay, it would naturally lead them to desire the execution of the criminal.

Q. So then, when it was announced that there had been a stay of execution, and that the case was to be taken to the Supreme Court, and it was known then that that meant delay, would not that have a tendency to increase this excitement and the danger of a lynching?

A. I should think it would; yes, sir.

Q. That is a thing that any reasonable and logical man would have known; that he could tell from that excitement or from those conditions?

A. Well, I don't know——

Q. As a matter that came to you, that you knew?

A. To use your own language, as a reasonable man I knew of the court proceedings, but I must say that I did not anticipate a lynching.

Q. You probably supposed that it would be stopped; but did you not, as a reasonable man, think that it would increase the excitement and revive the conditions that had existed before, under the circumstances?

A. No; I can hardly say that I did, sir.

Q. Did you not think it would cause apprehensions of that sort?

664 A. As stated before, it would possibly do so. I did not give it that thought at the time, and I didn't see that there was any such thought.

Q. Did you think that Ed Johnson was as safe in that jail that night, without extra precautions, after it was known that there had been a delay in the case, as he had been a few nights before, when it was thought that he would be hung right away? Would you not have considered that the danger of lynching Ed Johnson was increased?

A. I should think that the delay would increase the danger of interference with the law.

Q. Such that if you had been sheriff you would not have taken off any guards, but on the contrary have put on more guards to protect him?

A. If that had been my conviction, yes, sir; I would have done it.

By Mr. PRITCHARD:

Q. You stated, as I understood you, that at that time it did not occur to you that there was any danger of any lynching, or any cause for apprehending any danger to Ed Johnson?

A. No, sir.

Mr. SANFORD. I object to the statement of the personal opinion of this witness as to what he thought.

The COMMISSIONER. The objection will be noted.

By Mr. PRITCHARD:

Q. And as a reasonable man, which I believe was Mr. San-
665 ford's expression, you stated that at that time you knew of nothing to cause apprehension?

A. No, sir.

Q. And knew of none existing on the part of anybody?

Mr. SANFORD. I object to these questions as leading. Do not forget that this is your direct examination, Mr. Pritchard.

The COMMISSIONER. The stenographer will note the objection.

A. No, sir.

By Mr. PRITCHARD:

Q. You say you have been brought in close contact with Captain Shipp. I will ask you to state whether or not he belongs to the same Masonic lodge that you belong to.

A. He belongs to the Masonic order, but not to the same identical lodge.

Q. What lodge does he belong to?

Mr. SANFORD. I object to this testimony. Whether Captain Shipp is or is not a Mason has nothing to do with this case; and I object to having the record filled with matters of that character.

The COMMISSIONER. The stenographer will note the objection.

By Mr. PRITCHARD:

Q. What lodge do you belong to?

A. Temple Lodge No. 430.

Q. What is Captain Shipp's lodge?

A. I think he is a member of Chattanooga Lodge No. 199.

* * * * * * *

667 Mr. SHEPHERD. Mr. Commissioner, I suggest, as we are about through, I think entirely through, with the Handman case, that we take an adjournment until to-morrow morning.

The COMMISSIONER. Is that satisfactory to you, Mr. Sanford?

Mr. SANFORD. That is entirely satisfactory to me.

(Thereupon, at 4.20 p. m., the hearing was adjourned until to-morrow, Saturday, June 15, 1907, at 10 o'clock a. m.)

668 CHATTANOOGA, TENNESSEE, *June 15, 1907.*

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland, and counsel for the various defendants.

Mr. SANFORD. May it please the commissioner, the stipulations referred to have been signed by counsel, and I offer them here that they may be filed as a part of the evidence in the case. There is one relating to certain matters of proof, one relating to misnomer of certain defendants, and one relating to the typewritten copies of the testimony. I will file them with the commissioner.

The COMMISSIONER. All persons who have been summoned as witnesses must retire from the room.

Mr. SANFORD. I wish further to state that we will have Joe Franklin here Monday, so that Mr. Lynch can cross-examine him at that time.

Mr. LYNCH. Is he here now?

Mr. SANFORD. No; he did not understand you wanted him to-day.

A VOICE. He is here.

Mr. LYNCH. I thought if he was here we could get through with him.

Mr. SANFORD. I understand that he is here. You can examine him now if he is here.

Mr. SHEPHERD. Call William B. Cox.

669 W. B. Cox, a witness produced on behalf of the defendants, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. How long have you lived in Chattanooga, Mr. Cox?

A. I have been here about 30 years.

Q. What business have you been engaged in?

A. Well, I am a contractor. I am a general contractor now and have been for the last 12 years.

Q. A member of the firm of Cox & Ryder?

A. Yes, sir.

Q. I will ask you to state whether or not you are acquainted with the witness, J. N. Stonecipher, who heretofore testified in this case?

A. Yes, sir.

Q. Are you acquainted with his general reputation in this community?

A. I think so.

Q. Is it good or bad?

A. Well, it is not very good.

Q. From that would you give him faith and credit on his oath in a court of justice?

A. No, sir; I think not.

Cross-examination by Mr. SANFORD:

Q. How long have you known Mr. Stonecipher?

A. I suppose I have known him something like 12 or 15
670 years.

Q. You are competitors in business, are you not?

A. I don't know. I think maybe he jobs some, but he is hardly in my line. He gets lighter work than I do.

Q. You are competitors in business, though?

A. Yes, sir.

Q. Have you had any row with him?

A. No, sir.

Q. You never had any personal fuss with him?

A. No, sir.

Q. Have you ever known of his being indicted for anything?

A. I have heard about it; I don't know it.

Q. You have heard it, but you do not know of it personally?

A. No, sir.

Q. When was that?

A. Some few years ago. I don't remember when it was now.

Q. Was that in this county that you heard it?

A. Yes, sir; I heard it in this country.

Q. The records of this county would show that, if he has been indicted?

A. Well, I don't know. The way I heard it was that it was something in a post-office case.

Q. In the federal court?

A. I think so; something like that. I don't know anything about it positively myself. I heard it.

671 Redirect examination by Mr. SHEPHERD:

Q. Was that post-office trouble here or in Dalton, Georgia?

A. It was somewhere down in Georgia.

Recross-examination by Mr. PENLAND:

Q. That was about him giving a few postage stamps in change, was it not, for a fellow to put in a letter to send off? He wanted to send off some money, and it was violating the federal laws with reference to postage stamps, the sale of postage stamps, was it not; or did you learn the facts about it?

A. I didn't know the facts about it at all, only some general rumor.

Q. There was some little trouble about it?

A. It was a general rumor.

Q. About a dozen postage stamps?

A. The way I heard it, he brought the stamps here and sold them.

Q. It was only about a few stamps, was it not?

A. I don't know how many.

Q. Less than a dollar's worth?

A. I don't know.

Q. You do not know the facts about it?

A. No, sir.

672 Mr. SHEPHERD. I will suspend now to allow Mr. Spears to proceed.

Mr. SPEARS. Our witness is not here, Judge.

Mr. SHEPHERD. See if Joe Franklin is here, then.

JOE FRANKLIN (colored) was recalled for further cross-examination by Mr. Lynch (representing the defendant, Joe Clark):

Q. I believe you say that Joe Clark had a pistol on on the night of the lynching. What kind of a pistol was it?

A. I didn't.

Q. I do not understand you.

A. I didn't.

Q. You did not say he had a pistol on?

A. No, sir. He might have had a gun on him, but I didn't say it.

Q. If the stenographers have got it down that way, they have it wrong on you, have they?

A. They have a heap of things wrong that I didn't say.

Q. How do you know that?

A. I saw it.

Q. You have read the stenographer's report of your testimony?

A. No, sir.

Q. When did you see it, then?

A. I saw some of it in the paper this morning.

Q. Then the paper's report of your evidence is wrong, is it?

A. Oh, I said some of it.

673 Q. Some of the evidence they have reported on you is wrong, is it?

Mr. SANFORD. I object to bringing into this record the question of whether the newspaper report of this witness's evidence is right or not. It is entirely irrelevant to this question.

Mr. LYNCH. The witness brought it in.

Mr. SANFORD. Then there is no point in continuing the cross-examination from your point of view.

By Mr. LYNCH:

Q. You do not think they have you reported right, do you?

A. Some things I know they haven't.

Q. Some things you know they have not reported right?

A. No, sir.

Q. Now, if the stenographers have got you down as saying that Joe Clark had a pistol, then they have got you down wrong?

A. They sure have.

Q. You did not say he had a pistol?

A. I recollect what I said.

Q. You never did say he had a pistol?

A. I never did.

Q. You did not say anything about his having a pistol?

A. No, sir.

Q. You did not mention his having a pistol, in your evidence?

A. I did not.

674 Q. You did not refer to the fact that he had ever had a pistol, in your testimony?

A. I did not.

Q. You never saw him with a pistol?

A. Yes; I have.

Q. You have at times seen him with a pistol, but not that night?

A. Not that night.

Q. You saw his deputy sheriff's badge on that night?

A. I did not.

Q. They have you down wrong as to the deputy sheriff's badge, then?

A. I never said anything about a badge.

Q. You did not mention a badge in your evidence?

A. No, sir.

Q. You did not refer to a badge in your evidence?

A. I did not.

Q. You did not use the word badge in your whole testimony with reference to Joe Clark?

A. I did not.

Q. And if they have got you down as having said that, they have got you wrong on that?

A. They have got me wrong on that.

Q. You did not say anything about a badge at all?

A. No, sir.

Q. If they have got you down as having said that Joe Clark was there that night, they have got you down wrong, have they not?

A. No, sir.

Q. You did not say it?

675 A. I did say it.

Q. You did say it?

A. I did say it.

Q. If the stenographers have got you down on that, they have got you down right?

A. They have got me down right.

Q. So they do get you right sometimes?

A. Yes, sir.

Q. I am glad of it. Which bunch was he in? (A pause.) You know which bunch he was in without stopping to study, do you not?

A. No, sir; I don't.

Q. You do not know which bunch he was in?

A. I know he was in the crowd.

Q. You do not know whether he was in the first, second, or third bunch, do you?

A. I am not positive.

Q. You are not positive whether he was in the fourth or fifth bunch? Was he not behind the whole crowd?

A. I am not positive.

Q. Do you not think he was behind the whole crowd?

A. I am not positive.

Q. About what part of the crowd was he in?

A. I am not positive.

Q. Haven't you any idea about it?

A. I am not positive.

Q. Haven't you any idea where he was?

A. I know he was there, but I kept no record of exactly where everybody was.

676 Q. You have not the slightest idea, and you can not give the court the slightest idea as to what part of that crowd he was in, can you?

A. I know he was in the crowd.

A. Whereabouts?

A. I couldn't tell you. I know he was on Walnut street.

Q. All you can tell is that you saw him on Walnut street?

A. Yes, sir.

Q. And that is as near as you can describe his position there that night?

A. In the crowd; yes, sir.

Q. You saw him on Walnut street?

A. Yes, sir.

Q. But you will not say whether he was in the first, second, third, fourth or fifth bunch?

A. I will not.

Q. You will not say whether he was in the front rank, leading the charge, or in the rear rank, coming up with the stragglers?

A. No, sir.

Q. You have not the slightest idea which he was in?
A. Not now.
Q. Did you have yesterday when you were on the stand as a witness?
A. I don't know whether I did or not.
Q. You may have known yesterday which crowd he was in?
A. I know he was there yesterday. I know what I
677 thought he had and I know what I seen.
Q. You may have known yesterday whether he was in the front rank or in the rear rank? You may have known that yesterday?
A. I don't know as I knowed it yesterday.
Q. You may have known it yesterday?
A. I don't know that I did.
Q. You do not know that you knew it yesterday?
A. No, sir.
Q. Did you not swear yesterday that he was in the front crowd?
A. I did not. I swore that I knew two men in the front crowd.
Q. Did not Mr. Pritchard ask you yesterday, "Where was he?" and did you not answer, "He was in the first crowd?"
A. I might have answered it, but it slipped my memory.
Q. If you answered in that way, was it the truth or a falsehood?
A. I don't know whether I answered that or not.
Q. If you did, was it true or false?
A. I am not here to convict myself.
Q. You do not want to convict yourself of perjury?
A. No, sir.
Q. And for that reason you will not answer whether you told the truth or not?
A. I told the truth, sir. I don't know what I said yesterday, because I have no record.
Q. If you said yesterday that he was in the front crowd, and
678 you knew he was in the front crowd, you told what was not true?
A. I haven't said that.
Q. Have you not said to-day that you did not see him in the front crowd?
A. No, sir; I didn't.
Q. You did not see him in the front crowd?
A. I didn't say that.
Q. You did not say he was in the front crowd?
A. I didn't say either one.
Q. You did not say he was in any crowd?
A. I said he was there.
Q. You did not say he was in the front crowd?
A. I didn't say he was in the front crowd.
Q. And the stenographers have got you wrong on that, have they not?
A. I don't know whether they have or not.

Q. If they have it down on you, saying that he was in the front crowd, they have you wrong, have they not?

A. I don't know whether they have or not.

Q. Who does know, if you do not know what you saw? Who does know what you saw?

A. I have told you as near as I can come at it—as near as I possibly can. I am no stenographer.

Q. When were you telling the truth; yesterday or to-day?

A. I was telling the truth yesterday and to-day.

Q. You swore yesterday that Clark was a deputy sheriff that night.

A. I did not.

679 Q. You did not say that yesterday?

A. I said he was a deputy sheriff.

Q. Did you not say he was a deputy at the time of the lynching?

A. Well, he was a deputy; I guess he was. He was a deputy sheriff all the time he was with me.

Q. Did you not swear yesterday that he was a deputy sheriff on that night?

A. I swore he was as far as I know. If he wasn't, he was there as a deputy sheriff.

Q. I will ask you if Mr. Pritchard did not ask you this question yesterday: "He was a deputy sheriff at that time?" and did you not answer: "He was?"

A. So far as I know, he was.

Q. Oh, answer the question. Did you not answer the question positively yesterday when the question was put to you if he was a deputy sheriff? Did you not say, without any equivocation, that he was?

A. I might have answered that. I might have said he was.

Q. Was that true or not?

A. If I said it, it was true.

Q. If you said it, he was a deputy sheriff. What do you say about it now; do you say now that he was a deputy sheriff?

A. You have had that fifteen hours, and you all can change anything in fifteen hours.

Q. What could I change? Was he a deputy sheriff?

A. You can get up witnesses to swear he wasn't a deputy

680 sheriff, and I bet you are going to swear it.

Q. What are you going to swear about it?

A. I am going to swear that he was a deputy sheriff as far as I know. I didn't know about his resigning. He was a deputy sheriff when we used to make arrests that identical month.

Q. He went with you to make an arrest that identical month?

A. No; he didn't go with me.

Q. He did not go with you?

A. With all of us.

Q. Who else was in the crowd?

A. I don't know. The deputy sheriffs all worked together.

Q. What arrest did Clark make with you that month?

A. He didn't go with me on no particular arrest, to help me make any particular arrest, but he was with us out hunting up cases as officers do.

Q. I wish you would name one case on which Mr. Clark went with you or any other deputy sheriff that month, to make an arrest.

A. I don't know exactly. Mr. Clark was known as a deputy sheriff. Mr. Clark got sick and went off for a while. He went home and bought his father out at the store, but he still held his position and had his badge.

Q. Name a case in which he went to make an arrest.

A. That is impossible.

Q. Name a case.

A. I can not.

681 Q. Name one case.

A. I can't do that. There is no officer in the world that can think of trifling cases, unless there is a notoriety case.

Q. Name some "notoriety case."

A. We had no notoriety cases. The notoriety cases I had was by myself and I kept a record of them.

Q. You attended to the notoriety cases by your lonesome?

A. My own cases, yes.

Q. Mr. Clark did not deal in notoriety cases?

A. He did sometimes.

Q. Name some of them.

A. He was a full-fledged deputy, as far as I know.

Q. You say he wore his badge?

A. He wore his badge as deputy sheriff, is all I know about it.

Q. He wore his badge as deputy sheriff that month, did he?

A. All during the year 1906, so far as I know, until he resigned. When he resigned I didn't know anything about his resignation.

Q. Did he wear his badge up to the time of that lynching?

A. I don't know, but Mr. Clark was in and out here every day.

Q. Did you not say a while ago that he wore his badge during that month?

A. I did.

682 Q. You saw him during that month with the badge on?

A. I saw him and thought he was a deputy sheriff. He had his gun on. You understand when you pull off your badge you pull off your gun.

Q. Did you not say he had his badge on?

A. I did.

Q. Whereabouts did you see him that month with his badge on?

A. I seen Mr. Clark every day or two; I don't know.

Q. You saw him every day or two during that month with his badge on?

A. Not every day.

Q. You saw him every day or two with his badge on?

A. I saw him every day or two.

Q. And he had his badge on?

A. I know when I pull my badge off I pull my gun off.

Q. Every day or two during that month you saw Mr. Clark with his badge and gun on?

A. Not every day.

Q. I said every day or two.

A. Occasionally, yes sir; I did.

Q. You have changed it from every day or two to occasionally. How often is "occasionally;" once a week?

A. Perhaps once or twice a week.

Q. Once or twice a week during that month you saw Mr. Clark here in the city of Chattanooga?

A. Yes, sir.

Q. With his badge on and with his pistol on; is that right?

683 A. I didn't see his pistol every day. I know he carried a pistol.

Q. You say you saw him with his pistol on. How often did he have his pistol on? How often did you see him with his pistol on during that month?

A. I couldn't say.

Q. How often during that month did you see him with his pistol on?

A. I couldn't say it. I wouldn't swear it.

Q. You saw him with his pistol on during that month, and he was a deputy sheriff?

A. I knew nothing about his resignation until yesterday, after I came on the stand. Mr. Clark said: "Didn't you know I had resigned?" and I said: "I didn't know anything about it." I knew by that that you were fixing up a plan to do something. When Mr. Clark came to me and said: "Didn't you know I had resigned?" I said "I didn't know it." I said: "I knew you had bought the store out from your father."

Q. And right then you knew we were fixing up a trick on you?

A. Certainly.

Q. Trying to do some trick to you?

A. Yes.

Q. And these stenographers have been tricking you?

A. No, the stenographers haven't.

Q. They have been getting the evidence wrong?

A. They might have got me wrong.

684 Q. The newspapers have been tricking you and getting your evidence wrong?

A. No, they ain't been tricking me. They just naturally perhaps got something wrong. They got one thing wrong. I didn't say "pistol" yesterday. I said "gun or stick." I bet young Mr. Pritchard got it right if he got it at all. I said "gun or stick." You have it "pistol."

Q. We admit that Mr. Pritchard is all right. Did you not say this in your first examination:

"Q. Did you see any of the deputy sheriffs in the crowd?

"A. I saw one I knew.
"Q. Who was he?
"A. Joe Clark.
"Q. Where was he?
"A. He was in the first bunch."
A. I might have said that. If I said it, he was there.
Q. If you said it yesterday, he was there?
A. Yes, sir.
Q. But to-day you can not remember where he was?
A. I won't go over your books that you bring in from anywhere else, because I know you fellows. They are meant to throw my recollection. I am not an educated man, but I am a sensible man. They all have been after me for 15 years in this town. I have been a juryman in court and I have treated everybody right. I have been a good constable officer, and yet they pull after me with this thing and try and down my character. I have no stain on my character whatever.
Q. You know this bunch here—these lawyers?
685 A. I know you like a book. I wouldn't trust you, but some of you are all right.
Q. You know it is a whole bunch of rascals?
A. I wouldn't call you rascals.
Mr. SANFORD. I object to this line of examination. It is not proper.
Mr. LYNCH. He brought it in himself.
The WITNESS. I didn't call none of you rascals.
Mr. LYNCH. We are perfectly willing for him to say anything he wants to.
Mr. SANFORD. I think it ought to be confined to the issues in controversy, and I do not think that relates to the controversy; and I desire to note an objection on that ground. It is not relevant.
Mr. LYNCH. We are examining on vital questions.
Mr. SANFORD. I have no objection to the main line of the cross-examination; but when it involves a controversy in relation to counsel I do not see that it has anything to do with the case.
Mr. LYNCH. We are not raising it.
Mr. SANFORD. I do not think it ought to be in the record.
Mr. PRITCHARD. I think it ought to be in the record.
Mr. LYNCH. Yes, so that we can get his conduct before the Supreme Court of the United States.

By Mr. LYNCH:

Q. You say that you will swear now he was in the first bunch?
A. No, sir; I did not.
686 Q. But if you swore it yesterday it was so?
A. If I swore it yesterday it was so.
Q. But to-day you will not swear it?
A. I ain't swearing, because I have no recollection of what the stenographers took yesterday. I can't remember everything I said yesterday.
Q. But you can remember the facts?

A. I can't. If I could remember the facts I could remember all the facts to-day.

Q. You might remember the facts yesterday and forget them to-day?

A. Certainly, and you might do the same. That is what black and white is for, to keep the memory.

Q. Yesterday you might remember all that occurred, and where Clark was in the crowd, and to-day forget all about it?

A. No, sir; it isn't natural that I should know and forget all about it; but I know Mr. Clark was there and I know those other men I swore to was there.

Q. I am talking about Mr. Clark. Yesterday you said he was in the first bunch, and you say if you said so yesterday it must have been so.

A. I might have said it. I don't dispute it, if the stenographers have got it that way and got it down there honest from the heart, and don't mean to flatter me no way, it is all right; but if they haven't got it down with truth in their hearts, then they have got it any kind of way to flatter me.

Q. If they did not flatter you——

687 A. If they did not.

Q. If they did not flatter you, he was in the first bunch, but if they did flatter you you don't know where he was?

A. If they didn't flatter me they have it just like I swore it.

Q. If they did not flatter you, and say he was in the first bunch, you say he must have been there?

A. I say he was if I swore it.

Q. But you have not the slightest recollection to-day where he was, have you?

A. That is pretty good cross-examination, but I am not weak at all. Don't go over one thing so much. It is all irrelevant and not necessary.

Q. You have not the slightest recollection at this moment where he was, have you?

A. I have made it as plain as I possibly could, Mr. Attorney. I have told you about the pistol and about the gun; that I didn't say anything about it. I have done all I care to do.

Q. But I am asking you now if you can tell right now, or if you have right now the slightest recollection as to where in that crowd this man was?

A. I know he was in the crowd; that is all.

Q. But you have not the slightest recollection now as to whether he was in the first or the last bunch, have you?

A. The first and last bunch, all of them was bad; all just about the same, in my judgment.

688 Q. I am not asking you about good or bad. I am asking you if you have any recollection right now as to where that man was.

A. No, sir; I have not.

Q. You have not the slightest recollection?

A. No, sir.

Q. You have not the slightest recollection now, while you are on the stand, as to where he was, whether he was in the first or the last bunch?

A. No, sir.

Q. Or the middle bunch?

A. I haven't swore to any lies; I tell you that. I haven't swore to any lies whatever. I am coming down straight to you now. What I swear here you may cut around and try to get butchered up, but I am telling you honestly, sir. I swear just what I saw. That I didn't see I didn't swear to, because I didn't go no further than over the hill. I didn't go no more than within a block of the bridge, hardly, and I couldn't swear what was done beyond that block. I am swearing what I saw. I didn't take any company with me, because I was afraid myself. It was a dangerous night, and it was a treacherous night, and it was a vile night—at least there was vile people out that night, and I was afraid, and I was alone by myself. I came on back and was with nobody until I got to Georgia avenue. When I got into Georgia avenue I caught a car—no, I stayed there a while and then I caught a car and went out home.

Q. You were with a man named Allen, you said yesterday?

689 A. Yes, sir; and I stick to that. That was when I first came up.

Q. Did you not just now say you were alone?

A. Yes.

Q. By yourself?

A. By myself.

Q. You were not with Allen; you were alone?

A. You see you are more ignorant than I am, if I have to say it. When I first came to the court-house Allen and Dr. Thompson and Gibbs and the janitor was with me, sir; and after Allen went upstairs and came down and said he couldn't get to ring the bell I went on to the court-house and the crowd dispersed. I went and stood by the tree right at the west gate going over to Captain Shipp's office, by myself. From that on I was by myself. I went over the hill and came back by myself. That is what I said.

Q. What hill did you go over?

A. I went over Walnut street hill, right up by where all these big white folks live, Mr. Brown and all.

Q. What time did you start over the hill?

A. I went up after Captain Shipp and two men—I don't know who they was—walked right out and went on up the street.

Q. What did you go up the hill for?

A. I went on to try and follow the mob.

Q. Did you not say yesterday that you did not leave that place after the mob came out there?

A. No, sir; I didn't.

Q. You did not say anything like that?

A. I said I didn't leave until after they got out. I said the
690 reason I didn't leave was that I was afraid to move from there because if they had seen me there might have been something done.

Q. You were afraid of the mob?

A. Certainly. Who wouldn't be?

Q. You were frightened at the mob?

A. That is the reason I kept away from testifying in the case, because I was afraid.

Q. You were afraid if they saw you that night they would kill you?

A. Certainly they would.

Q. You knew they would kill you if they saw you?

A. I knew it.

Q. And for that reason, to save your life, when they went over the hill you followed them over the hill?

A. Yes.

Q. Because you were afraid of them; because you were in mortal terror of them, you followed them over the hill?

A. Yes, sir.

Q. When you followed them over the hill how close were you to them?

A. I didn't keep no closer than within half a block of them. When I went over the hill my intention was to try to slip up to the bridge.

Q. In order to save your life?

A. No, sir.

Q. Because you were afraid they were going to murder you?

A. It wasn't to save my life. I was dodging to save my life.

691 Q. You were dodging right there after them?

A. Certainly. I wouldn't like for them to see me.

Q. You were doing that to save your life?

A. Whenever I got to a light I would walk in the dark places and keep them from seeing me. My intention was to get as near the bridge as I possibly could. I couldn't make it to the bridge.

Q. You thought the safest place in Chattanooga for you was as close to those men that were going to kill you as possible; is that the idea?

A. I don't know as they were going to kill me, but you know they would have done it if they saw me and knew who I was. You know they would have done it, and there are white men in this county that knows exactly what they would have done if they had discovered me following them and knew that I knowed anything about this thing. That is why I left Chattanooga and kept from testifying, because I knew it was dangerous. This is dangerous, too. There isn't a man that didn't walk out yesterday and say, "That nigger ought to be killed for going up on the stand." I am talking to you. I am telling you the truth. You know I know it, you white people do. I am

telling the truth. The paper said I was a sassy nigger on the stand. It isn't so. I am talking for my rights?

Q. You are talking for your rights?

A. I am talking for my rights. I acted as an honorable constable in the county and I treated every white man and every colored man in the county right. In six years, instead of making five hun-
692 dred enemies I didn't make six enemies. There ain't many negro constables that can say that. These niggers back there will say that there ain't many niggers that are elected that can get up the record that I got as a constable, all amongst the white people, and get out with less enemies than I did in six years, and be renominated on a fourth term, when you people defeated me by redistricting the county in order to make the county go Democratic. I ain't got six enemies amongst the nigger race. That is hard to say amongst the niggers in this State, and these niggers here will stand up and say it. You are trying to impeach me——

The COMMISSIONER. We do not want any speech. Answer the questions the gentleman puts to you.

The WITNESS. Pardon me, Judge.

By Mr. LYNCH:

Q. Is there anything else you want to say?

A. I am done, now.

Q. Who was the man who said you ought to be killed?

A. Oh, I don't know.

Q. You do not know?

A. A man said it. A man told me a man said it.

Q. A man told you that?

A. Yes.

Q. Who told you that somebody said you ought to be killed?

A. Some man when I went out.

Q. Who told you that?

A. Some man.

693 Q. Don't you know the name of the man who told you that somebody had said you ought to be killed?

A. No, sir. I told him "All right; that is all right."

Q. Was it a white man or a colored man?

A. A colored man; but there was a white man standing there.

Q. Who was the white man who was standing there?

A. I didn't know him.

Q. You did not know the colored man or the white man?

A. No, sir. I would know their faces if I saw them.

Q. Did not the colored man tell you who it was that said you ought to be killed?

A. No, sir; he said he heard a white man going out of the court room. I talked to him and he said, "I heard a white man come out of the room just now, and he said 'That damn nigger ought to be killed, getting up on the stand and testifying.'"

Q. He heard a white man state it? He heard a white man state that you ought to be killed?

A. No, sir; he said two white men walked out of the court room, and one said to the other, "That damn nigger ought to be killed for saying such a thing on the stand." I said, "All right, my friend, I thank you." I said, "I will keep my eyes open. He may kill me, but I will be at the killing."

Q. There would be somebody else dead when they killed you?

A. That is what I said to him: "I will be at the killing."

694 Q. You do not know any of them?

A. No, sir; I don't know either one, the colored man or the white man. They were standing there. He said he heard it all.

Q. Is that colored man or that white man, either one, in the court room now? Turn around and see if you can pick them out.

A. No, sir; I don't see either one of them.

Q. They are all gone?

A. That was yesterday at noon, when I got off the stand.

Q. What did Mr. Clark have on that night?

A. I disremember. I think mighty near all of the first and second crowd, as near as I can remember, had on these light overcoats.

Q. But you do not know whether Clark was in the first or second crowd, or the third or the fourth or the fifth. What did he have on?

A. I don't know. I knew Clark because Clark didn't have no mask on his face. None of the deputies, regular deputies, that I saw had any mask on.

Q. What other regular deputies were there?

A. I don't know. There were several men there with guns.

Q. I know; but you said none of the regular deputies that you saw had on any masks.

A. Every man that had either guns or sticks, understand me, I took them to be deputies.

Q. Who were they?

695 A. I don't know.

Q. None of them had on masks. You know the deputies?

A. I know them, but these men didn't happen to be on the side where I was. I only identified the people closest to me.

Q. Did you not say yesterday that Clark was the only deputy there?

A. No, sir; I didn't say he was the only deputy.

Q. Except Jones? Did you not say he was the only one except John Jones?

A. No, sir.

Q. You did not say that?

A. I said Johnnie Jones was there.

Q. What other deputies were there?

A. I don't know.

Q. You knew them all; you served with them?

A. I knew every one of them.

Q. They all served with you and you knew them all?
A. Yes.
Q. You saw them there that night?
A. Yes, sir; I saw some deputies. I don't know whether all of these that I know were there or not. I wouldn't say that.
Q. What deputies did you see there that night?
A. I told you all I saw—all I know.
Q. Clark and Jones?
A. Yes.
Q. Those are all the deputies you saw?
696 A. All I know. Several men had guns or sticks, I don't know which. They were walking along with guns or sticks in their hands.
Q. Why did you know Clark and not know the others?
A. I know him, that is all; because the rest of the men that had guns were on the other side. There were several men walking along. You know how often a young man will run up——
Q. What other side are you talking about?
A. The other side from me.
Q. What crowd?
A. All of the crowd.
Q. They were marching with all the crowd?
A. There were some men, yes, sir. Some of them had guns or sticks—I wouldn't swear which one of the two.
Q. Was Clark on the other side of the crowd?
A. No; he was on the side next to me.
Q. Clark was on the side next to you?
A. Yes.
Q. How close to you?
A. I guess he was about 15 or 20 feet from me. You know they just marched right down Walnut street, right on across.
Q. Clark was on the side next to you, and only 15 or 20 feet from you, in plain view of you?
A. Certainly.
Q. And there was nothing between you and him?
A. I had to catch a sight of the men as they passed. They was just passing right by, everybody moving right on, and I couldn't identify everybody in the crowd.
697 Q. But you did identify him, because there was nothing between you and him?
A. He was the first man I noticed with a gun.
Q. What kind of a gun did he have?
A. I couldn't tell you. I said it was either a gun or a stick.
Q. You said just now he was the first man you saw with a gun.
A. I meant with one of those things in his hand. That is what I meant.
Q. Which hand did he have it in?
A. He had it in his right hand.

Q. In what position did he carry it?
A. He was just walking along with it in his hand.
Q. Did he have it up over his shoulder or down?
A. No, sir; nobody had nothing on his shoulder.
Q. He was just walking along with it that way?
A. He had hold of it and was walking right along.
Q. He was on the edge of the crowd out next to you?
A. He was on the side next to me.
Q. Was that the first, second, third, or fourth crowd?
A. I wouldn't say.
Q. Yet he was the first man you saw with a gun?
A. He was the first one I noticed with a gun. There might have been some that passed before that. He was the first person I noticed with a gun. That first attracted me to him.
Q. You do not know whether he was in the last crowd or the first crowd?
698 A. I didn't pay any attention to that.
Q. You do not know whether he was the last man you saw or not?
A. I saw several men with things in their hands, but I didn't pay attention to who they were. They were passing right along.
Q. Was he the last man you saw or not?
A. No, sir.
Q. Did you not say a while ago that you did not know whether he was the last or not?
A. No, sir.
Q. Did you not say that you did not know whether he was in the last crowd or behind the last crowd?
A. I said he was the first I saw with a gun; but several did pass afterwards with a stick or a gun.
Q. Did you not say a while ago that you did not know whether he was in the rear end of the last crowd?
A. I don't know. I said he was the first man I noticed with a gun. I never paid much attention to all that. I never made no map of all that. I wasn't expecting to be a witness on this night, and I didn't want to come in contact with all those other parties.
Q. What kind of an overcoat did he have on?
A. If I am not mistaken they all had on one of these light overcoats.
Q. Was it white or light?
A. No, it was kind of light, you know; light brown or something like that.
Q. Which was it; light or brown?
699 A. That is light—brown.
Q. Was it gray or brown?
A. I took them to be brown. It might not have been.
Q. It was brown?
A. It might not have been. I am not sure about that.
Q. It was a brown overcoat?

A. It looked like a brown overcoat to me from where I could see it. All of them looked just alike.

Q. You were close enough to Mr. Clark to recognize his features and give the color of his overcoat, and yet you cannot tell whether he had a gun or a stick in his hands. Is that right?

A. I can't tell. It was either a gun or a stick or something made to look like a gun. I took it to be a gun. It must have been.

Q. You are getting more positive of that?

A. It was either a shotgun or some kind of a stick.

Q. It looked more like a shotgun than a rifle?

A. It was about that long [indicating].

Q. It was about three feet long, was it?

A. I couldn't tell.

Q. What kind of a hat did he have on?

A. I couldn't tell.

Q. Which side of his coat did he have his badge on, the left or the right?

A. I don't know, sir.

Q. You know he had one on, do you not?

A. If he had one on he had it over here [indicating].

Q. You know whether he had it on?

700 A. I didn't pay attention to whether he had it on or not. If he did, I didn't notice it.

Q. You did not see it?

A. I might have saw it and I might not.

Q. You do not know what kind of a hat he had on?

A. No.

Q. Was he smoking or not?

A. I never seen nobody smoke in that crowd.

Q. There was nobody smoking there?

A. I say I never seen nobody smoking.

Q. You do not remember any time when you did any official business with this man Clark?

A. No particular indictment; no, sir. I know we went out together, but I couldn't state.

Q. Do you know positively that he was a deputy sheriff at that time and was doing the work of a deputy sheriff?

A. As far as I know he was.

Q. Not as far as you know. Do you know?

A. I say as far as I know, because I had heard nothing of his resignation.

Q. But, do you know? Do you not know that you had been working with him as deputy sheriff during that month?

A. I know I was working with him as deputy sheriff off and on, but I don't say I did any particular work with him that month; but we was out and in. Sometimes I would go out with Clark and Taylor, and sometimes I would go out with Galloway and Mr. Curtis. Sometimes I would go with first one and then another.

Q. When was the last time you went out with Clark and Taylor?

701 A. I can't tell you.

Q. Was it three or four weeks before that?

A. I can't tell you.

Q. Was it two months before that?

A. I can't tell you.

Q. Was it six months before that?

A. I can't tell you.

Q. How about Galloway? Was it two weeks before that?

A. I have no recollection.

Q. Was it a month?

A. I have no recollection.

Q. Was it two months?

A. I have no recollection.

Q. Was it six months?

A. I have no recollection.

Q. Was it a year?

A. I have no recollection. There is no use of me swearing anything about that.

Q. There is no use of your swearing about it? Can you think of anything he did as a deputy sheriff within a year before that time?

A. We went out and made arrests.

Q. When?

A. I couldn't swear when. It was along in the summer time, last summer, but I don't know what time. I know we went out and made arrests, several of them. I don't know what month or what date.

Q. Or what year?

A. I know it was last summer we went out.

702 Q. And that is the last time you can swear about any deputy work he did?

A. Yes, sir; all along through the lively time, but just to say what time, I couldn't.

Mr. SHEPHERD. Mr. Sanford, will you permit me to ask this witness two or three questions?

Mr. SANFORD. Certainly.

By Mr. SHEPHERD:

Q. You know a colored man named Moses Stokes, do you not?

A. Yes, sir.

Q. Was he not there with you, or between you and the jail at the time they led this man Johnson out—at the time the mob led Johnson out?

A. Between me and the jail?

Q. Yes.

A. He might have been. He was up there. I don't know where he was.

Q. Where did you see him?

A. I don't remember seeing Stokes, to my knowledge, until after I went over Walnut Hill, and I went over as far as 4th street, I think. I don't know. I think it was when I came back down to Georgia avenue before I saw Stokes is my recollection. He might have been there. I was standing right behind the big tree on the right as you go over to the jail, leaning up against the tree. When he hollered "Look out, boys; clear the way; I have got him," I shot right to the northwest gate. He could have been on the other side of that tree and I wouldn't have known it.

703 Q. Answer the questions, and you and I will not get excited.

A. No, sir; we understand each other.

Q. The day following the lynching of Johnson there was very considerable excitement in the city amongst the colored folks, was there not?

A. Yes, sir.

Q. The colored people all quit work in the factories where they had been working before and were congregating on 9th street?

A. Yes, sir.

Q. And there was some considerable trouble apprehended of a rising on the part of the negroes that night?

A. Yes, sir.

Q. Do you know of the fact that I was sent among the colored people to quiet them down?

A. Yes, sir; I remember it.

Q. And to disperse the crowd and to get them to go home and stay off the streets?

A. Yes, sir; I remember it.

Q. Do you know a young lawyer by the name of Henry Fry?

A. Yes, sir.

Q. Did you see him that day on the street?

A. I disremember exactly whether I saw him that day or not. I might have.

Q. You are well acquainted with Mr. Fry?

A. I am well acquainted with him. I did lots of work for him.

704 Q. Did not you and he have a conversation on that day with respect to the crowds of negroes that were gathering, and the danger of trouble that night?

A. Yes, sir; we did.

Q. I will ask you if you and he did not have a conversation at the office of Squire Ware in the afternoon of that day, in reference to who it was that composed the mob that lynched Johnson the night before.

A. Yes, sir; I believe we did.

Q. Did you not tell Henry Fry that you heard that the lynching was going on at the court-house or at the jail, and that you started to go there; that you got part of the way, as far as 8th street, and that you became alarmed and concluded it was not safe for you to go any further towards the jail?

A. No, sir; I didn't say that, because I had witnesses that went right there with me.

Q. I know. Did you not tell Mr. Fry that you did not go either to the court-house or the jail that night?

A. No, sir. Judge, you have changed from where you was when you were there that day, because you were right with us that day. You are on that side of the house to-day [indicating defendants]. You were not on that side that day.

Q. All right. So, you did not tell Henry Fry that?

A. No, sir; I didn't tell him that.

Q. Did you not tell him that some one told you while you were on the way to the court-house that the colored lawyer, Hutchins, was in danger of being lynched by this same mob, and that you concluded that the thing for you to do was to go out to Hutchins' home in Churchville and warn him to escape from the mob?

705

A. I told Squire Ware that myself.

Q. Did you not tell Henry Fry that?

A. I might have told him, but I certainly told Squire Ware.

Q. And that instead of going to the court-house or jail you turned across and went to Churchville to warn Hutchins?

A. No, sir; I went there after I came back. That is what I told Squire Ware.

Mr. SHEPHERD. That is all.

Mr. SANFORD. That is all.

The WITNESS. Have you done with me forever?

Mr. SANFORD. You are discharged. We are through with you.

Mr. SHEPHERD. Now, I will resume with the testimony in behalf of my clients.

706 *Testimony on behalf of the defendant, Bart Justice.*

Mr. SHEPHERD. Call A. J. Ware. I introduce Squire A. J. Ware as a witness in favor of the defendant, Bart Justice.

The COMMISSIONER. He is simply recalled?

Mr. SHEPHERD. It would really be considered as original testimony on my part.

The COMMISSIONER. He had better take the oath, then.

Mr. SHEPHERD. Swear him again, then.

A. J. WARE, a witness produced on behalf of the defendant, Bart Justice, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Mr. Ware, I will ask you if you are the same A. J. Ware who was examined yesterday or the day before at the instance of the Government in this case?

A. On Tuesday.

Q. You are the same A. J. Ware?

A. Yes, sir.

Q. I will ask you to state if you are acquainted with the defendant, Bart Justice?

A. Very well.

Q. How long have you known him?

A. Thirty-five years.

Q. State whether he is a man of striking appearance.

A. He is.

707 Q. He is a large, portly man?

A. He is.

Q. I will ask you to state if you saw the lynchers who brought Johnson out of the county jail on the night he was lynched.

A. I did.

Q. State whether or not Mr. Justice was one of the men that brought him out.

A. He was not.

Q. Are you positive about that?

A. I am positive he was not in the mob that brought him out of the jail.

Q. If he had been there would you have known it?

A. I would have recognized him above any one that was there.

Q. I will ask you to state whether or not he was anywhere about the court-house or the bridge, if you saw him.

A. I did not see him anywhere.

Q. During the night of the lynching?

A. No, sir.

Cross-examination by Mr. SANFORD:

Q. Where did you see him that night, Squire?

A. He was not there. If he was I didn't see him.

Q. There were a great many people in the mob that you did not recognize, were there not, Squire?

A. Yes, sir.

Q. You did not see everybody in the mob?

708 A. No; but had he been with the crowd that brought Johnson out of the jail I would have known and seen Bart Justice. He was not there.

Q. How close did you follow that crowd as you came out of the jail?

A. I was standing in the lobby when they came down from the cell with the prisoner.

Q. How close were you to them?

A. Four or five feet.

Q. If Bart Justice had had a mask on, might that not have prevented him from recognizing him?

A. There was not any man of his size that had a mask on.

Q. Who was the man of his size? What other man was there of his size?

A. There was not any man of his size there.

Q. There was not any big man?

A. Not of his size; no, sir.

Q. How close did you follow the crowd when they went to the bridge?

A. The crowd came out of the jail and started up Walnut street. An electric car came along and I started home. That is the way I was going. I caught the car, and went as far as 4th street. The mob was just in front of me when they got to 4th street. They cut the lights out and I got off immediately and followed the crowd to the bridge.

Q. Then from the jail until you got to 4th street you did not follow the lynchers?

A. No, sir.

709 Q. You were on the car?

A. I was on the car.

Q. He might have joined the lynchers after he got out, so far as you know?

A. Yes, sir.

Q. And got in with them again?

A. Yes, sir; he might have during that time; yes, sir, but not from the jail to the car.

Q. What you know about it practically is this. You say he did not come out with the men when they came out?

A. No, sir; he did not.

Q. And whether he was with them afterwards and got in the crowd after they were going from the jail, you can not say?

A. If he was there he did not show up on the bridge when they were hanging and shooting him.

Q. He might have been there and you not see him?

A. He was not around him.

Q. Could he not have been there and you not have seen him?

A. No, sir; he could not have been there without my seeing Bart Justice.

Q. How many were around him?

A. Ten or twelve.

Q. It was clear enough for you to recognize anybody distinctly?

A. It was clear enough to recognize a man of his build and physique. I would know him, you know, above everybody, with 35 years' acquaintance.

710 Q. Do you know Nick Nolan as well as you do Bart Justice?

A. No, sir. Bart Justice and I were personal friends for 25 years.

Q. You were personal friends for 25 years?

A. Yes, sir.

Mr. SANFORD. I may want to cross-examine a little further, but not at this time.

Mr. SHEPHERD. My associates suggest another question.

Redirect examination by Mr. SHEPHERD:

Q. Did you see the man who appeared to be the leader and spokesman of the mob that brought Johnson out of the jail?

A. Yes, sir.

Q. Was that man Bart Justice?

A. No, sir; it was not.

Recross-examination by Mr. SANFORD:

Q. Who was that man?

A. I don't know. He was not as large a man as Bart Justice by quite a good deal.

Q. He was not as large a man as Bart Justice?

A. No, sir.

Q. Did you see Luther Williams there on the bridge?

A. I gave my testimony in that case that I thought I saw him, but that I would not make affidavit that it was him.

Q. What did you see him do?

A. I don't say I saw Luther Williams do anything.

711 Q. What is your recollection as to the man you took to be him?

A. He shot the nigger when he fell.

Q. How many times?

A. Five.

Q. Five times?

A. Yes.

Q. How close were you to him at that time?

A. In the neighborhood of 20 or 25 feet.

Q. How long had you known Luther?

A. Why, I have known him for several years, but I have only been associated with him for the last three or four years—since he was a little boy.

Q. How have you been associated with him?

A. Well, just meeting him.

Q. Do you belong to any lodge with him?

A. I think so.

Q. You do belong, as a matter of fact, to the lodge he belongs to?

A. I do.

Q. And Nick Nolan belongs to that lodge?

A. He does.

Q. And Luther Williams and Charlie Powell belong to that lodge?

A. If Charlie Powell does I don't know.

Q. Will Marquette does?

A. I don't know.

Q. Bart Justice does?

A. He does not.

712 Q. Sheriff Shipp does?

A. No.

Q. Did you see Charlie Powell there on the bridge?

A. Charlie Powell was not there. If so, I did not see him.

Q. How long have you known Charlie Powell?
A. Since he was a baby.
Q. You have known him a long time?
A. Yes, sir.
Q. Did you see Will Marquette there on the bridge?
A. I did not.
Q. Did you see him at the jail?
A. No, sir; I did not.
Q. Did you see Charlie Powell at the jail?
A. No, sir.

By Mr. SHEPHERD:

Q. You did not see Claude Powell either, did you?
A. No, sir.

Mr. DANIELS. I want to ask one question.

By Mr. DANIELS:

Q. How long have you known William Marquette?
A. Since he was a baby.
Q. You did not see him either at the jail or on the way up to the bridge or at the bridge?
A. I did not.

By Mr. CHAMLEE:

Q. In your testimony the other day you stated then that you did not know whether the man whom you referred to as Luther
713 Williams was in fact Mr. Williams or not. You did not know it at the time, and you did not know it then?
A. I so stated at that time.
Q. And you do not know now whether it was Mr. Williams or not?
A. No, sir.
Q. That was a mere impression you had; that is all you undertook to say?
A. That is what I said.
Q. You have been a justice of the peace and a judicial officer for a number of years?
A. Yes, sir.
Q. And you would not go before a court and convict any man on what you say about Luther Williams, would you?
A. I would not.

Mr. SANFORD. I object. That is a matter of personal opinion of this witness. He is not to judge of the testimony or weigh the testimony. The court must do that.

By Mr. CHAMLEE:

Q. Anyway, you are the judge of what you know about it; and your testimony the other day, and what you mean to say now, is that you saw a man there, and with the slight sight you had of him it seemed to you it might be Mr. Williams?
A. Yes, sir.

Q. But you do not say it was, and you did not say it was the other day, and you would not say at all that it was Luther Williams?

A. No, sir.

Q. And you do not undertake to create the impression that by having known him for a good while you are swearing now it was Mr. Williams?

714 A. I do not.

Q. You do not want that impression to be made at all by your testimony, that it was Mr. Williams?

A. I do not. It was simply an impression of mine at the time. That is what I stated the other day.

Q. And it is the same with reference to Mr. Warner—that your impression then was it was him, but you do not want to convey the impression that you are swearing now it was either the one or the other?

A. I do not swear it was him.

By Mr. SANFORD:

Q. But you do swear it was your impression that those were the men; that at the time that was your impression?

A. I so stated.

By Mr. LYNCH:

Q. You know Joe Clark?

A. I know him very well. He worked for me in the neighborhood of two years.

Q. As deputy sheriff?

A. Yes, sir.

Q. I will ask you if he had been acting as deputy sheriff for some time before this lynching occurred?

A. He had not.

Q. I will ask you if——

A. He was a deputy sheriff, but he was not working at the time.

Q. He was not working as deputy sheriff?

715 A. He was in business in Sherman Heights.

Q. He was in a mercantile business in Sherman Heights?

A. Yes, sir.

Q. I will ask you if when he was acting as deputy sheriff he did not do a great deal of work in your office for you?

A. He did.

Q. Was he doing any work at all at the time, or had he been doing any for several months before the lynching?

A. He had not.

Q. You know him well?

A. Very well.

Q. And you were intimately associated with him for two years?

A. Yes, sir.

Q. I will ask you if you saw him in that crowd that night?

A. No, sir; I did not.

Q. I will ask you if you do not believe, Mr. Ware, that knowing him as you do, and being intimately associated with him, if he had been in that crowd you would have noticed him?

A. I think I would.

Q. If he had had a deputy sheriff's badge on, or a gun, or anything like that, I will ask you if you believe you would have noticed him?

A. I do.

Mr. SANFORD. I object to the opinion of the witness on that as incompetent.

716 The COMMISSIONER. The objection will be noted.

By Mr. LYNCH:

Q. And you did not?

A. No, sir.

By Mr. SANFORD:

Q. Were there not a great many men in the crowd that you knew and that you did not recognize that night?

A. I don't know.

Q. Do you mean to say that you would recognize every man you knew in that crowd?

A. I do not attempt to say that I recognized every man I knew in the crowd.

Q. Then it is quite possible that there were a good many men in the crowd that took part in that lynching that you knew but did not recognize that night?

A. There might have been. I do not say there were not.

Q. The fact that you did not recognize or see him there does not prove that he was not there, does it?

A. Nothing more than that a man would naturally recognize people he was intimately acquainted with quicker than he would others.

Q. You do not pretend to have seen every man that was in the crowd?

A. No, sir.

Q. And there may have been and were a great many men in that crowd that you did not see—that you did not get close enough to to see who they were?

717 A. There were a great many men in the crowd I did not recognize.

Q. And there were a great many men you did not get close enough to, in light places, to recognize; is that true—and a great deal of excitement?

A. Yes, there was quite a good deal of excitement.

Q. And there were a great many men that were in the crowd that you did not get close enough to, in a place where it was light, to recognize them?

A. That is true.

Q. Even if you had known them intimately you might not have recognized them. That is true, is it not?

A. I think had I known a man intimately there was light enough there to recognize an intimate friend.

Q. But there were men in the crowd that you did not see in light places?

A. Sure.

Q. They might have been intimate friends of yours, but you did not see them in places where you could recognize them?

A. Yes.

Q. That is true, is it not?

A. Yes, sir.

Mr. LYNCH. In the agreement we set out a list of the deputy sheriffs. There is some reference to this man being a deputy sheriff at that time, and I want to know whether you are really going to insist that Mr. Clark was a deputy sheriff?

718 Mr. SANFORD. I am going to insist on the proof. I do not assume that he was not a deputy sheriff at that time. I have not examined this evidence exhaustively and critically, and you must prove your case. There is proof tending to show that he was a deputy sheriff at that time, and you must introduce your proof on that point.

JAMES F. JAMES, a witness produced on behalf of the defendant Bart Justice, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Mr. James, where did you live at the time Ed Johnson was lynched, in March of last year?

A. I lived in St. Elmo, 718 Harris avenue.

Q. I will ask you to state whether you are a mechanic or not, and what sort of a mechanic are you?

A. I am a molder.

Q. For whom did you work at that time?

A. The United States Cast Iron Pipe and Foundry Company.

Q. I will ask you to state whether or not Mr. Bart Justice is a neighbor of yours in St. Elmo?

A. Yes, sir.

Q. How far is it from your house to the county jail?

A. I couldn't state exactly. It must be three or four miles.

Q. What route of travel do you use in getting from your home to the place of your work?

A. The Lookout Mountain car.

719 Q. Your work is here in the city of Chattanooga, is it?

A. Yes, sir.

Q. I will ask you to state when you first heard of the lynching of Ed Johnson, and give the circumstances.

A. The next morning after the lynching, when we got on the car——

Q. Who got on the car with you?

A. Mr. Justice for one, and Mr. Fryar and others that I disremember, but those two I remember. When we got on the car, Mr. Broyles was the conductor, and he said something about it, and some one in the crowd had a paper——

Mr. SANFORD. I object to the conversation. Do not tell the conversation.

Mr. SHEPHERD. I will not go into that.

By Mr. SHEPHERD:

Q. Some one had a newspaper—the Chattanooga Times?

A. Yes, sir.

Q. State whether or not the announcement of the lynching of Johnson was in the Times and was read there by some person on the car.

Mr. SANFORD. I note an objection to matters occurring after the lynching as not relevant to the issues.

Mr. SHEPHERD. You will see the pertinency of it presently. I do not want to ask anything that is not exactly competent.

Mr. SANFORD. I do not think that is competent.

By Mr. SHEPHERD:

720 Q. State whether or not that was the first information you had that the lynching had occurred.

A. Yes, sir.

Q. And there were present with you at the time Mr. Justice and this man Fryar and several others.

A. Yes, sir.

Q. Where were you going?

A. To work.

Q. Where did Bart Justice work at that time?

A. He worked at the same place, the United States pipe shop.

Q. He is a molder too, is he?

A. Yes, sir.

Q. What was the condition of health of your wife the night Ed Johnson was lynched?

A. She was sick.

Q. I will ask you to state if anybody sat up with her that night?

A. Yes, sir.

Q. State who they were, please.

A. Mr. Justice and his wife and daughter.

Q. What time did they come to your house?

A. I should judge they came there between 6 and 7 o'clock.

Q. What time did they leave your house?

A. It was after 10 o'clock.

Q. State whether or not Bart Justice was continuously at your house that night from the time he came there between 6 and 7 o'clock until he left about 10 o'clock.

721 A. He was.

Cross-examination by Mr. SANFORD:

Q. Are you close neighbors?

A. Yes, sir.

Q. How long was your wife sick? Was she sick some time?

A. No, sir; she was attacked with a case of pleurisy; side pleurisy.

Q. Was she sick for some weeks?

A. No, sir; she was only sick a few days.

Q. Did Mr. Justice and his wife stay there with her any other night? They sat up with her several nights, did they not?

A. No, sir; I think not. She was taken sick the night before this happened, on the evening before this happened, and the next morning before this happened I was late at work and I told Mr. Justice why I was late, that my wife was sick.

Q. I have not asked you about your conversation. Do not state that.

Mr. SHEPHERD. He is just explaining how he knows it was the same time.

Mr. SANFORD. I object. I did not ask him that. I asked him how long his wife was sick.

Mr. SHEPHERD. Yes, I know.

By Mr. SANFORD:

722 Q. And I ask if they did not sit up with her several other nights besides this night?

A. They probably did.

Q. Both Mr. Justice and his wife?

A. They were there that night.

Q. I did not ask that, but I asked whether they did not sit up other nights besides this night.

A. I wouldn't state positively they did.

Q. But you think probably they did?

A. Well, I don't know.

Q. You just stated a moment ago that probably they did.

A. Yes; probably they did.

Q. That is your best recollection, that they did?

A. Yes.

Q. What reason have you for picking out this particular night from any other night?

A. From the fact that the next morning after this happened we got on the car and read it in the paper, and I remembered very distinctly——

Q. There was no accusation in the paper about Mr. Justice the next morning, was there?

A. No, sir.

Q. And nothing to make you remember that that was the particular night that he had been at your house?

A. No, sir.

Q. You did not suspect Bart Justice at the time?

A. No, sir.

Q. When did you first hear that Bart Justice was accused of being one of the lynchers?

A. I couldn't say just when.

Q. You did not hear anything about it until some months
723 after? It was when this suit was brought by the Government, was it not?

A. I couldn't say that.

Q. Do you remember of hearing anything about it until along in the next fall, in October, or in the next fall when this suit was brought—anything about Bart Justice being in the mob?

A. I couldn't state positively at the time. I don't remember, at that time.

Q. What is your best recollection? Is not that the first time you heard of it, now, when the Government instituted these proceedings for contempt?

A. I couldn't state. I don't remember when Mr. Justice's name was brought into the matter. I don't remember.

Q. You do not remember hearing of his name being brought into it before that time, do you?

A. No, sir; I don't remember, I say.

Q. At the time you first heard Mr. Justice's name was connected with it, what was there to associate in your mind that particular evening with this occurrence?

A. The simple fact that on the night this happened I know he was at my home. That is all.

Q. I ask you what there is to pick out this particular night from all the other nights he was there?

A. Because it was very vividly portrayed on my mind by that lynching. I remember reading it in the paper, and I remember distinctly he was at my house.

Q. What did Justice have to do with your reading about
724 the lynching? How did that connect Justice in your mind with it?

A. Nothing more than I remember that the night of the lynching he was at my house.

Q. Has Justice been to see you to talk with you about it?

A. About this?

Q. About this thing.

A. We have talked about it; yes, sir.

Q. Has he talked about being at your house, and talked over this matter with you about being at your house?

A. We talked over that some; yes, sir.

Q. Did he come and ask you if you recollected, and suggest that he was there and ask you if you recollected it?

A. He didn't have to ask me. I remembered it.

Q. Did he do it; did he ask you if you recollected it?

A. No; I won't say he did.

Q. Will you say he did not?

A. Well, I don't remember the conversations we have had, the exact words. I can't remember them.

Q. Do you say he did not come and ask you if you did not recollect about his being at your house the night of that lynching?

A. How is that?

Q. Will you say he did not come and ask you if you did not recollect his being at your house the night of that lynching, and was not that the first way the thing was brought to your mind, and that that night was called to your attention in connection with this lynching?

725 A. No, sir; I won't swear that. I won't swear that he suggested to me to remember that.

Q. I do not ask you if he suggested to you to remember it. I asked if he called your attention to it.

A. I don't think he did. I wouldn't say that he did and I wouldn't say positively that he didn't; but if he had I don't have any recollection of it.

Q. Had you thought anything about his being at your house the night of the lynching until he came and talked to you about it?

A. Yes, sir.

Q. What made you think back and connect him with it before he came to talk with you?

A. From the simple fact that I remembered distinctly of the lynching and remembered he was there.

Q. The next morning did you think anything about Bart Justice being connected with it? Did you think anything about it until this suit had been brought?

A. How is that?

Q. Did you think anything about Bart Justice in connection with it until you heard this suit had been brought?

A. I didn't think anything particular about him being in it, but I remembered he was at my house.

Q. Do you work at the same place with him now?

A. No, sir; not now I don't. I did at that time.

Q. Do you belong to the same lodge with Bart Justice?

A. No, sir.

Q. Or the same societies of any kind?

A. We belong to the Iron Molders' Union.

726 Q. You are good personal friends?

A. We are personal friends; yes, sir.

FRED FRYAR, a witness produced on behalf of the defendant, Bart Justice, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Where do you live?

A. At St. Elmo.

Q. Where did you live at the time of the lynching of Ed Johnson?

A. Where I live now.
Q. I will ask you to state where your work is.
A. Where do I work?
Q. Yes.
A. I am working for—well, I wasn't working anywheres at that time. I was crippled, and wasn't able to work.
Q. Coming from your place to town, what route do you travel?
A. I come on the Lookout Mountain car.
Q. A street car?
A. Yes, sir.
Q. I will ask you to state if you were on the car with Mr. James and Mr. Justice and others the morning after the lynching of Ed Johnson?
A. Yes, sir; I was.
727 Q. When did you first hear that Ed Johnson had been lynched?
A. I heard it that morning when I got on the car.
Q. Did you get it from the newspapers? Somebody had a newspaper in the car?
A. Yes, sir; the conductor gave Mr. James one, I think, and he was reading it in the paper.
Q. Bart Justice, this defendant, was there on the car, too?
A. Yes, sir.
Q. Where was Bart Justice the night before?
A. He was down at Mr. James's, right adjoining lots with me.
Q. How do you know he was there?
A. I didn't see him, but I heard him talking over there, and laughing and talking on the porch.
Q. Did you recognize his voice?
A. Yes, sir.
Q. Who was there with him at Mr. James's house?
A. His wife and daughter and Mr. James and Mrs. James.
Q. I will ask you to state if you saw Mr. Justice when he left Mr. James's house.
A. No, sir; I didn't see him. I just heard him tell them "Good-night," or "Good-bye," or something like that.
Q. Did they have a lamp or a light on the front porch?
A. Yes, sir.
Q. To come down stairs?
A. Yes, sir.
Q. How do you know that was the night that Johnson
728 was lynched?
A. Well, I know he was there that night, and the next morning it was reported that Ed Johnson was lynched.

Cross-examination by Mr. PENLAND:

Q. When did you first hear that Bart Justice was charged with helping to lynch Ed Johnson?
A. Well, I don't know exactly just how long it was; a short time, though.

Q. About how long?
A. Well, it may have been four or five days.
Q. Was that the talk in the community up there?
A. Yes, sir.
Q. And you thought then that he was not connected with it because you knew he stayed right there at your neighbor's house that night?
A. Yes, sir; I knew he was in there the very time they said the lynching was done.
Q. Who did you hear talking about it and saying that he was probably connected with it, within four or five days?
A. Just some people on the car. I don't know who it was. I didn't pay attention to it.
Q. Did you speak to Bart Justice about it and tell him they were charging him with it?
A. No, sir; I don't think I did.
Q. Why did you not? He is your neighbor and your friend, is he not?
729 A. Well, I know, but that was just the talk there. Maybe he said something to me about it before I did to him.
Q. Did he tell you he was along?
A. He told me he wasn't along.
Q. He said they were charging him with it, did he not?
A. Yes, sir.
Q. That was four or five days after it occurred?
A. I won't say for sure. I think it was four or five days.
Q. Is it not a fact that Bart Justice's name was never published in the newspaper, or it was not known that he was one of the defendants in this case or would be, until along about September or October—after that length of time?
A. Well, I don't recollect.
Q. You do not recollect?
A. No, I don't recollect how long it was.
Q. How close do you live to that neighbor's house?
A. James?
Q. Yes.
A. It is just exactly 40 feet from the side of my house to his.
Q. What time did you come there that night?
A. It must have been about seven o'clock.
Q. Did you see them come?
A. No, I didn't see them.
Q. Were you over there that night?
A. No, sir.
Q. Did you speak to Bart Justice that night?
A. I don't think I did; no.
Q. You did not speak to him nor to his wife nor to his daughter?
730 A. No, sir.

Q. You did not speak to any of the family that was over there?
A. I don't think I did that night. I just heard them.
Q. What time did you go to bed?
A. I went to bed about eight o'clock.
Q. How long was it before you went to sleep?
A. I generally go to sleep pretty quick.
Q. Can you explain to this court why it was, if you went to bed at eight o'clock, and you say you go to sleep pretty quick generally, that you happened to be awake about ten o'clock that night and heard Bart Justice leave your neighbor's house?
A. I generally go to bed every night about 8 o'clock.
Q. Why is it you happened to be awake?
A. They woke me up by laughing and talking there on the porch.
Q. Were they out on the porch?
A. They was when they got ready to start home.
Q. Did you get up and go to the door to see?
A. No, sir.
Q. How do you know it was them?
A. I could just tell them by their voices; that is all.
Q. Did Bart Justice have a noted voice?
A. Yes, sir; he has a loud voice.
Q. What kind of a voice has he?
A. A big coarse voice.
Q. His voice is pretty strong?
731 A. Yes, sir.
Q. What did he say when he started?
A. Well, I believe he said "Good night."
Q. "Good night?"
A. Yes, sir.
Q. Is that all he said, now?
A. That is all I recollect him saying.
Q. Did he say "good night" in a big coarse voice?
A. Yes, sir. It sounded to me like he was about near the gate.
Q. You were then in bed?
A. Yes, sir.
Q. And the doors were closed?
A. Yes, sir; the doors were closed.
Q. It was in the winter time and it was cold weather, was it not?
A. Yes, sir.
Q. You claim now that he did not say but that one word, and you are willing now to swear that was Bart Justice?
A. Yes, sir.
Q. You are willing to swear it was Bart Justice?
A. He was there that night.
Q. You knew him by his voice?
A. Yes, sir.
Q. What time of night was it?

A. I don't know exactly. I heard my clock strike nine o'clock and I dropped off asleep again, and when they got out on the porch it woke me up.

Q. Do you know what time it was when they left?

A. No, except what they said.

732 Q. You never noticed the timepiece any more that night after it struck 9 o'clock?

A. No, sir.

Q. And it might have been 11 or 12 o'clock, might it not?

A. I just heard the clock strike 9.

Q. You heard it strike 9?

A. Yes, sir.

Q. And you did not hear it strike any more that night?

A. No, sir.

Q. So that when you woke up and heard them leave, instead of 10 o'clock it might have been 11 or 12 o'clock?

A. It might have been.

Q. So that Bart Justice might have been down in Chattanooga and might have gone home and gone over there to that house, so far as you know?

A. Well——

Q. You went to sleep at 8 o'clock?

A. I went to sleep at 8 o'clock.

Q. And you do not know what time it was when he left there. You can not swear as to that at all, can you?

A. I know it was between—well, it was after 9 o'clock.

Q. It was after 9 o'clock, and that is all you can say?

A. James said he left there at 10.20.

Q. Do not state what James said. You were not over there.

A. He was there after 9 o'clock, but I don't know what time after 9.

Q. It might have been 11 or 12, you said a while ago.

733 A. It might have been.

Q. You might have gone to sleep and slept longer than you thought.

A. It might have been.

Q. You do not know whether he was in Chattanooga that night or not, do you?

A. No, sir; I do not.

Q. You simply know that he was there about 7 o'clock at your neighbor's?

A. Yes.

Q. And you went to bed about 8 o'clock, and you heard him say "good night" some time after 9 o'clock, but you do not know when it was?

A. No.

Q. And that is as much as you know about it?

A. That is all.

734 Mrs. Adelia Justice, a witness produced on behalf of the defendant, Bart Justice, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. Shepherd:

Q. Your name is Mrs. Adelia Justice?

A. Yes, sir.

Q. I will ask you if you are the wife of Bart Justice?

A. Yes, sir.

Mr. Penland. Is this the wife of Bart Justice?

Mr. Shepherd. Yes.

Mr. Penland. I want to note an objection to her testimony. This is a criminal proceeding, and she is not a competent witness in the case.

Mr. Shepherd. Note your objection. The court will decide that.

The Commissioner. The objection will be noted.

Mr. Shepherd. You must remember that this is not a trial in a state court. Your objection would be good in this State, but not in this case.

Mr. Penland. We insist that it is good.

By Mr. Shepherd:

Q. Mrs. Justice, do you remember the night when it was said that Ed. Johnson was lynched in the county jail here in March, 1906?

735 A. Yes, sir; I heard of it next morning, afterwards.

Q. When did you first hear of it?

A. Next morning.

Q. How did you hear it?

A. Mrs. Duckett, a friend of mine next door, gave me the paper.

Q. You read of it?

A. Yes, sir.

Q. Where was your husband, Bart Justice, that night from about seven o'clock until 10 o'clock?

A. From five o'clock in the forenoon until half past 10 that night we were at Mrs. James'—twenty minutes after 10, rather.

Q. What were you doing at Mrs. James'?

A. Mrs. James was sick, and my husband asked me why I didn't go down there. I told him," "I didn't know she was sick." He said, "Hurry up and get supper, and we will go down "——

Mr. Sanford. You do not want the conversation, do you?

Mr. Shepherd. No.

By Mr. Shepherd:

Q. You need not state what your husband said. I do not want that. What time of the night was it that you went down to Mr. James' house?

A. I couldn't really tell you. It was about half past six or seven o'clock.

Q. How long did you stay at Mr. James' house?

736 A. We stayed until 20 minutes after 10, or very near twenty minutes after ten.

Q. I will ask you to state whether or not your husband was at James' house with you continuously from the time you got there until you left at 10.20.

A. Yes, sir.

Q. Do you know how far it is from your house to town, to the jail here?

A. No, sir; I really do not.

No cross-examination.

Miss Emma Justice, a witness produced on behalf of the defendant, Bart Justice, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. Shepherd:

Q. Your name is Miss Emma Justice, is it?

A. Yes, sir.

Q. I will ask you to state if you are the daughter of the defendant, Bart Justice.

A. I am.

Q. Do you remember the time that Ed. Johnson was lynched in the county jail in March, 1906?

A. In March, 1906?

Q. Yes. Do you remember about that occurrence?

A. Yes, sir; I remember.

Q. When did you first hear the lynching had taken place?

737 A. The next morning.

Q. How did you hear it?

A. From Mrs. Duckett, next door. She had the paper. She takes the morning Times, and she called mother to the door about it.

Q. Where were your father and mother the night before you were reading that paper?

A. We were at Mrs. Jim James'.

Q. What were you doing there?

A. Mrs. James was sick, and father let him off at a little past three so he could come home and do the night work up. So he asked mother and I had we heard anything about it——

Mr. Sanford. Do not tell what he said.

By Mr. Shepherd:

Q. Do not state what your father asked you, but state where you were that night.

A. At Mrs. James'.

Q. What did you go there for?

A. We went there on business.

Q. What was the occasion for it?

A. She was sick, and we went down to sit up a while with her.

Q. How long did you stay there?

A. Until twenty minutes after 10.

Q. How do you know?
A. Because when we got home the clock had just struck half past.
738 Q. I will ask you to state whether you looked at your own clock when you got home.
A. Yes, sir; I looked at my own clock.
Q. How far do you live——
A. We live a block from Mrs. James.
Q. And it was twenty minutes to ten when you got home?
A. Yes, sir.
Q. What did your father do when he got home?
A. He went to bed.
Q. It was twenty minutes to 10 when you got home, did you not say?
A. No; it was half past ten. The clock just had struck.
Q. I did not understand you. Was your father there next morning at breakfast?
A. Certainly he was there.
Q. How did he leave to go to town?
A. How did he leave?
Q. Yes.
A. Next morning?
Q. Yes.
A. He went to the car line and got on the car and came to work.
Q. How far is the car line from your house?
A. About three blocks.
Q. That is the way he travels to go to work?
A. Yes, sir.

Cross-examination by Mr. PENLAND:

739 Q. When did you first hear that your father was charged with being in this lynching crowd, Miss Justice—how long after that time?
A. It was about a week after that, I suppose.
Q. Who told you he was charged with it?
A. We read it in the paper.
Q. You read it in the paper?
A. Yes, sir.
Q. What time was it when you went over to Mr. James' house—your neighbors—on that night?
A. That night?
Q. Yes.
A. When we went there?
Q. Yes.
A. It was about half-past 6.
Q. Half-past 6?
A. Yes, sir; or 7, I don't know which.
Q. How many nights did you stay with the sick woman?
A. Just that one night.

Q. Just that one night?

A. Yes, sir.

Q. How did you happen to go there on that particular night, Miss Justice?

A. How did we go there?

Q. How did you happen to go on that particular night?

A. Mr. James came from the shop and father came with him—just about half an hour after he came, you know—and he asked mother, and I did not know anything about it; and he said after we got supper over we would go down and sit up awhile.

740 Q. How close are they?

A. About a block from my house.

Q. You have not heard that she was sick at all?

A. No, sir; we had not heard a thing.

Q. Your father told you about her being sick?

A. Yes.

Q. And suggested that you go down and sit up a while that night?

A. Yes, sir.

Q. And that is the only night you remember going down and sitting up with the sick woman?

A. We went down there before.

Q. How long before?

A. We had went down several times before.

Q. About how long before that had it been since you were there the last time?

A. About three or four nights.

Q. About three or four nights?

A. Yes, sir.

Q. How long was she sick?

A. I don't know how long she was sick.

Q. You said a while ago you did not know she was sick; and then you said your father came home and told you that evening she was sick and suggested that you go down there. How do you explain that, when you say she was sick before?

A. Mr. James was late at the shop that morning, and father asked about it, and he told him his wife was sick.

Q. But you say she was sick three or four nights before that.

741 A. I didn't say she was sick three or four nights before I said we went down.

Q. You went down and sat up there when she was not sick?

A. Yes, sir.

Q. That is what you meant to say?

A. Yes, sir.

Q. But she was not sick that long at all?

A. No, sir; she was taken sick the night before.

Q. Are you not mistaken about the length of time it was from the time the lynching occurred until you heard your father was connected with it, or his name was in the paper? Was it not when this suit was brought some long time after that?

A. No, sir; it was about a week after that.
Q. You are certain he was accused of it about a week after it?
A. Yes.
Q. And you and your father and mother all of you talked about it?
A. No, sir; we didn't talk about nothing.
Q. You did not talk about——
A. The lynching?
Q. Well, about his being connected or charged with being connected with it. You talked about that?
A. No, sir; we never talked about it. Father never mentioned it.
Q. It did not concern you enough to talk about it?
742 A. No, sir.
Q. Might it not have been some other night than the night you stayed all night?
A. Stayed all night?
Q. The night you stayed at James', and sat up with the sick woman there. Might it not have been some other night?
A. I don't understand you.
Q. Might it not have been some other night than the particular night of the lynching that you stayed at James'?
A. No, sir.
Q. Why?
A. The next morning father was sitting in the front of the car and Mr. James in the back, and he had a paper and was reading——
Q. Were you on the car?
A. No, sir.
Q. Then you do not know that.
A. But father knows it.
Q. But you can not tell that.
A. He told us——
Q. You can not tell that.
Mr. SHEPHERD. Tell what you know, Miss Justice.

By Mr. PENLAND:
Q. What time of the week was it?
A. Monday night, the 19th of March, 1906.
Q. You remember the night very distinctly?
A. I do.
743 Q. What night was any of the other nights that you went down to sit up?
A. Before that?
Q. Yes. What day of the week was it, and what date of the month?
A. Well, the date of the month was, I think, the 17th.
Q. You think you were there on the 17th?
A. Yes, sir; we was there.
Q. Are you certain about that?
A. Yes, sir; I am certain.
Q. What day of the week would that have been?

A. Friday, I think.

Q. How does it happen that you remember now the date of the month and the day of the week?

A. Well——

Q. There was nothing like a lynching to call your attention to that. How come you to remember that?

A. We were just down there on that day.

Q. You were just down there on that day?

A. Yes, sir.

Q. Was your father down there, too?

A. Yes.

Q. And your mother was there, too?

A. Yes; mother was there.

Q. Were you there more than twice?

A. Yes, we were there several times.

Q. How long before that were you there, until you were there again?

744 A. I can't remember.

Mr. PENLAND. That is all.

Redirect examination by Mr. SHEPHERD:

Q. Do you remember where you were, Miss Emma, on the Sunday night after this?

A. Yes, sir; we were at Mrs. James'.

Q. The Sunday night after this Monday night?

A. Yes, sir.

Q. You were at Mrs. James' again?

A. Yes, sir.

Q. Who was in company with you then?

A. Father and mother and myself.

Recross-examination by Mr. PENLAND:

Q. Did you talk about the lynching when you were there?

A. No, sir.

Q. Nothing was said about your father being connected with it when you were down there?

A. No, sir.

HENRY P. FRY, a witness produced on behalf of the defend-
745 ant, Bart Justice, after being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Your name is Henry P. Fry?

A. Yes, sir.

Q. I will ask you to state what is your profession.

A. Lawyer.

Q. Where do you practice law?

A. I am practicing now at 421–2–3 Temple Court, Chattanooga, Tennessee.

Q. I will ask you to state whether you were a practicing lawyer in Chattanooga at the time Ed. Johnson was lynched in March, 1906.

A. Yes, sir.

Q. At that time did you know Joe Franklin, the colored constable?

A. Yes, sir; I knew him very well.

Q. I will ask you to state whether you knew the justice of the peace, A. J. Ware, at the same time.

A. Yes, sir.

Q. On the day following the lynching of Johnson did you have any conversation with Joe Franklin at the office of Squire Ware on Ninth street in this city, with respect to what he knew about the lynching of Johnson, and who the lynchers were; and with respect to where he was at the time the lynching occurred?

A. I did.

746 Q. Will you state to the court just the conversation you had with Franklin—all of it?

A. I was present at Squire Ware's office some time between two and 4 o'clock in the afternoon, and naturally the subject of conversation was in regard to the lynching the night before. I was talking to Squire Ware about the mob, how they got in the jail, and matters connected with the mob, and I turned around to Franklin who was sitting in the court room at the time, and asked him the question if he was present at the mob, or knew anything about it. He replied that he was not, that he started there, but that he saw that it was no place for a damn nigger, and he left; and he said furthermore that he heard the mob was going for Lawyer Hutchins, and he had gone out to Hutchins' house, somewhere in the outskirts of the town, to warn Hutchins, so that the mob couldn't catch Hutchins.

Q. Where did he say he had gotten to when he made up his mind it was not a safe place for a nigger to go?

A. He told me he started up there. That was the conversation we had.

Q. Did he state how far he went, or whether he got to the jail or not?

A. I understood that he started towards the jail, and concluded it was not a safe place for a nigger, and left.

Q. How far did he get before he turned his course?

A. I don't remember that portion of the conversation. All I remember I have told you.

Q. Who was lawyer Hutchins?

747 A. He was a negro lawyer that hung around Squire Ware's office. He had no office of his own at the time.

Q. State whether or not he was the same Lawyer Hutchins who was connected with the suit of Johnson in the Federal Court.

A. Yes, sir; he was the same man.

Q. On that day on Ninth street there was a very considerable concourse of colored people, was there not?

A. Yes, sir; the street was full of negroes.

Q. And there was apprehension that there was going to be trouble that night?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. When was this conversation?

A. It was in the afternoon of the day following the lynching of Ed. Johnson.

Q. In Squire Ware's office?

A. Yes, sir.

Q. And the words he used were "he didn't go there?"

A. Didn't go there, because he saw it was no place for a damn nigger, and he left.

Q. He did not say he did not go to the jail, or he did not say he did not go to the bridge?

A. He just said he didn't go there.

Q. He did not say which?

A. It was a general remark that he "didn't go there."

748 Q. He did not use the words "jail" or "bridge," but said he did not go there?

A. As far as I remember, he did not.

Redirect examination by Mr. SHEPHERD:

Q. I will ask you to state whether it was asked of Franklin as to what he knew about who the lynchers were, and whether he professed knowledge or absence of knowledge.

A. I asked the question.

Q. What did you ask?

Mr. SANFORD. I object. The witness Franklin was not asked about it.

Mr. SHEPHERD. If I did not ask Franklin about it, it will be stricken out. I do not remember.

Mr. SANFORD. It would not be competent unless you asked him.

Mr. SHEPHERD. I know that.

By Mr. SHEPHERD:

Q. How was that?

A. I immediately put the question to Franklin, and asked him what he knew about the lynching, who did it, and all about it.

Q. What did he say about it?

A. As near as I can remember, Franklin said he knew nothing about it at all, and then he followed that with this remark, that he started up there and found it was no place for a damn nigger, and left.

749 Recross-examination by Mr. SANFORD:

Q. Is it not a matter of fact that at that time nobody would say they knew anything about it? It was a very prudent thing for a negro like Franklin at that time to say that he did not know anything about it, was it not?

A. Squire Ware talked very freely about it.

Q. Was it not a very prudent thing for Franklin, under the circumstances at that time, to say he did not know anything about it, when he was not on oath on the witness stand? Is it not a fact that you would not have expected him to make it public if he had known?

A. I had known Franklin well. He had served papers for me, and I had thrown him considerable fees. It would have been quite natural for him to tell me, if he knew.

Q. But there was trouble to be expected. It was a dangerous thing, if he came out and stated publicly that he had identified a lot of the lynchers?

A. I do not think it was. The people he was talking to were people he knew.

Q. You do not think it was a dangerous thing for him to do?

A. No, sir.

Q. Were you connected with a paper at that time?

A. No, sir; I had no connection at all with a paper at that time.

750 Q. Was it possible at that time to find anybody who would say he knew anything about it, or had identified the lynchers, except Squire Ware? You say he did talk.

A. I talked freely with Squire Ware about it.

Q. Did you find anybody besides Squire Ware who would do it?

A. No, sir. I did not go out looking for information.

Q. You say that was the natural subject of conversation?

A. Yes; in Squire Ware's office.

Q. And all around town?

A. I did not go anywhere but at that place.

Q. That is the only conversation you had?

A. Yes.

Q. You were there on business?

A. I had some cases there and they had been continued, and I went to see about them. I have forgotten the character of the cases and what finally became of them, but I was there for that business. I had some business before Justice of the Peace Ware, and I was there sometimes in the day and sometimes in the night.

J. B. JUSTICE, a witness produced on behalf of the defendant Bart Justice, after being first duly sworn by the commissioner according to law, testified as follows:

751 By Mr. SHEPHERD:

Q. Mr. Justice, are you one of the defendants in this case?

A. Yes, sir.

Q. And your name is Bart Justice?

A. Yes, sir.

Q. I will ask you to state if you were present at the county jail of this county, or at the county bridge across the river, on the occasion when Ed. Johnson was taken from jail and hung over on the county bridge?

A. No, sir; I was not.

Q. I will ask you to state if you had anything to do with the lynching of Ed. Johnson.

A. No, sir; I did not.

Q. State whether or not you aided and abetted in the lynching of Ed. Johnson.

A. No, sir.

Q. In any way, in the lynching?

A. No, sir; I did not. I didn't know the man. I never saw him in my life to know him.

Q. State whether or not you counseled and encouraged anybody else?

A. No, sir.

Q. I will ask you to state to the commissioner where you were the night Ed. Johnson was lynched.

A. Well, after my wife showed me the paper when I got home, telling about my being accused of it, it put me to studying. I
752 never was away from home since I moved to St. Elmo of nights, and we got to studying. I told my wife, "We was sitting up down at Mrs. James's on that night, on the night Ed. Johnson was lynched." She says, "That is right. We were sitting up with Mrs. James. She was sick." I says, "Yes, ma'am; that is right."

Q. How did you arrive at the conclusion that you were at Mrs. James' that particular night.

A. Well, the next morning——

Q. How do you recollect about it?

A. On Tuesday morning we got on the street car and a fellow by the name of Broyles on the rapid transit car line was always joshing me. I rode with them every day over to work in town, and got well acquainted with them——

Mr. SANFORD. You do not want him to tell that, do you?

Mr. SHEPHERD. No; I do not want that.

The WITNESS. Anyhow, he approached me, that——

Mr. SANFORD. Do not tell about that conversation. I ask that it be excluded.

Mr. SHEPHERD. I agree to that.

By Mr. SHEPHERD:

Q. When did you first hear that the lynching of Ed. Johnson had occurred?

A. Broyles told me when I got on the car.

Q. That is as far as you need go.

A. That is as far as I heard of it.

Mr. SANFORD. I ask that the statement be excluded from the record.

Mr. SHEPHERD. What I want is when he first heard of it, and he says it was on the car.

753 By Mr. SHEPHERD:

Q. When did you first get the information that you were accused of complicity in the lynching?

A. I don't remember just the day. I had been in a car wreck out there, and I was on sticks. I had been down to the doctor's office, and I went home, and it was in the paper. My wife first time me about it.

Q. Do not tell what your wife said. It was in the paper?

A. Yes.

Q. And you do not remember when that was?

A. No, sir; I don't remember just what day of the week it was published.

Q. After you heard that your name was connected with it, state, then, what you did in order to bring to your mind where you were that night.

A. Well, I just got to studying about where I was at that present time, and so I says to my wife: "We were sitting up down at Mrs. James' on that night."

Q. You remembered, on reflection, where you were?

A. Yes, sir.

Q. State whether or not you are now prepared, after reflecting about the matter, to state positively where you were on the night Johnson was lynched.

A. Yes, sir; I am.

Q. Where were you?

A. I was at Mrs. James' house, or Mr. James' house, sitting up with the sick woman.

754 Q. Who was in company with you?

A. My wife and daughter, and Mr. James and his wife, and his wife's two cousins, two young men in South Pittsburgh.

Q. What time of the night did you arrive at Mr. James' home?

A. I couldn't positively say. It was between 6 and 7 o'clock though. It was early.

Q. How long did you remain there?

A. Why, I suppose until maybe 10.25. We just got in my hall, just opened the door and got in the house, when the clock in the bedroom struck half past something, and my daughter went in with a lamp and she said it was half past 10.

Q. Do not state what she said.

A. I didn't see the clock, but she mentioned half past 10.

Q. You heard the clock strike half past something?

A. Yes, sir.

Q. What time did you go to work on the following morning?

A. I generally caught the six o'clock car in the morning, the rapid transit line. That was the nearest to me.

Q. If you remember, state any of the persons who got on the car at the same time you did.

A. If I am not mistaken—I won't be positive whether Mr.
755 Duckett got on the car or not—but Mr. Broyles, and also Mr. James, and I believe to my best recollection Mr. Baker and Mr. Dick Sherlin got on the same car.

Q. You used the car as a means of getting to your place of work here in the city?

A. Yes, sir. It was nearer to me, and wasn't crowded so bad as the other line was.

Q. You said you were not about the county jail at all on the occasion of the lynching?

A. No, sir; I was not.

Q. And you had nothing to do with breaking into the jail?

A. No, sir.

Q. Or with taking Johnson out?

A. No, sir.

Q. Or with lynching him afterwards?

A. No, sir; I didn't know the man. I never saw him in my life. If I did, I didn't know it. I didn't know him at any time.

Cross-examination by Mr. SANFORD:

Q. How close does Mr. James live to you?

A. It is about a block. There is a ten-feet alley between my property and his.

Q. How often do you go down to see him?

A. Why, maybe every Sunday evening for two or three Sunday evenings. Then maybe it will be two or three weeks before he calls.

Q. You go down week days, you and your wife?

756 A. In the evening, yes, sir.

Q. You are close friends and neighbors?

A. Nothing more than neighbors there.

Q. You have worked together?

A. He has worked for the same firm I have, yes, sir.

Q. And you ride in on the same cars?

A. Sometimes.

Q. You very often go to his house with your wife, and he goes to your house?

A. Sometimes.

Q. There is nothing particular to make you remember one evening you have been down there more than another, is there? It is nothing unusual for you to go to your neighbors?

A. I go down there sometimes, but the particular occasion was reading the paper the next morning on the car, and I remember I was there that night.

Q. You did not know you were accused of it at the time?

A. No, sir; that was a month afterwards, I suppose.

Q. Was it not when this suit was brought by the Government?

A. It came out in the paper before the papers were served by Evans and Dunlap, or whatever the name was.

Q. It did not come out until the papers were served, did it?

A. There was something in the paper before that, if I remember.

Q. When was it you began to make this investigation?

757 A. I haven't made any investigation especially at all.

Q. You say you talked it over with your wife and told her you thought you were down there that night?

A. I told her we were down to James' that night, because I remembered distinctly reading it next morning on the street car.
Q. You talked it over with your daughter, did you not?
A. Not especially.
Q. You never mentioned it?
A. No.
Q. You never talked it over at the house?
A. I mentioned it to my wife.
Q. You never talked it over at the table?
A. No, sir.
Q. You never said anything about it all these months? You never said anything to anybody about going down there?
A. No, sir.
Q. Did you ask Mr. James about it—whether he remembered your being down there?
A. No, sir.
Q. Have you talked to him at all?
A. No, sir; no more than that I was going to summon him as a witness.
Q. Did you say what you wanted with him?
A. I just said I wanted him to testify whether I was or was not at his house that night.
Q. You told him that was what you wanted him about?
758 A. I told him that was what I would summon him for.
Q. When did you talk to James about it?
A. Since court has been going on.
Q. You never talked to him before he was subpœnaed, as to whether he remembered about your being down to his house?
A. No, sir.
Q. You did not talk to him, or talk to his wife, about being at his house?
A. No, sir.
Q. You never did?
A. No, sir.
Q. You have not talked to any other witnesses you have brought?
A. No, sir.
Q. You have not talked it over in the family, except just with your wife?
A. That is about all—me and my wife.
Q. You never go out nights, I understand you to say?
A. Yes—that is, up until four or five weeks ago. I go to town probably every other Saturday night.
Q. You do not belong to any lodge?
A. Nothing but the union.
Q. What is that?
A. The Iron Moulders' Union.
Q. Where does that meet?
A. It means the Iron Moulders' Union.

Q. I say, where does it meet? Where is the hall?
A. The hall is on Montgomery avenue, it is now.
Q. What part of town?
759 A. Out where Market ends at Montgomery avenue, just back of the bank, at the left hand side, is where the hall is now.
Q. Had you ever taken part in any lynchings before this?
A. No, sir.
Q. Did you have anything to do with the lynching back in 1885, when a negro was lynched?
A. Never. I never saw a man hung in my life, legally or any other way.
Q. Did you have anything to do with the attempt to lynch Ed. Johnson and Westfield?
A. No, sir.
Q. Did you go to the jail?
A. Yes.
Q. But you did not have anything to do with it?
A. No, sir.
Q. How did you happen to be there?
A. I went as a spectator.
Q. You did not go there to take part in the lynching?
A. No, sir.
Q. You were one who went through the jail?
A. Yes, sir.
Q. And reported that he was not there.
A. Yes, sir; by consent.
Q. By consent?
A. By request.
Q. What night of the week was it that the first lynching, or attempted lynching, occurred?
760 A. I don't remember.
Q. What night does your lodge meet?
A. It is meeting on Friday nights now.
Q. On what night was it meeting at that time?
A. It used to meet on Thursday nights.
Q. It never met on Monday night?
A. No, sir; it is changed now because a different body belongs in the same hall——
Q. And you accommodate each other?
A. Yes, sir.
Q. What night of the week was the first attempt to lynch Ed. Johnson?
A. I don't remember.
Q. Do you remember how you happened to be in town that night?
A. Yes; I came in to town on the car with everybody.
Q. What did you come for; for what purpose?
A. To see the excitement.
Q. What was the excitement? Had you heard there was going to be an attempt to lynch Johnson?

A. I didn't know there was going to be for sure.
Q. But you thought it was probable?
A. I didn't know there was going to be.
Q. What was the excitement?
A. Nothing more than a lot of people got on the street-car to come to town.
Q. Where was that excitement? At St. Elmo?
A. All along, from St. Elmo into town.
761 Q. You did not see any excitement until you got into town, though?
A. No.
Q. You started at St. Elmo, and other people got on the car and you got on?
A. Yes.
Q. You got on and came in, and followed the crowd to the jail?
A. Yes.
Q. Who came in on the car that night?
A. I don't remember.
Q. You ride in on this car almost every morning, do you not, to work?
A. Not on this car—on the rapid transit car line.
Q. That is, a street-car?
A. Yes.
Q. Do you remember the men who have ridden in with you different mornings during the past year?
A. No, sir; I don't remember. I remember some.
Q. Do you remember, except for the last week or two, the men who have been with you on the car when you came in; any particular morning I mean?
A. I remember neighbors that lived around me, and rode on the same car, until they got the rapid transit out—when I would ride on the Boyce line.
Q. Can you remember any man who was on the car with you on any particular day of last year?
A. Only when my neighbors got on the car. Some morning I got on the car ahead of them, and some mornings they got on the
762 car ahead of me.
Q. Were you armed when you came to the jail the first time?
A. No, sir.
Q. Did you get any gun in town?
A. No, sir.
Q. You did not have a gun at all?
A. No, sir.
Q. Or a pistol?
A. No, sir.
Q. You went through the jail to see if he was there?
A. Yes, sir.
Q. That was your purpose?
A. Yes, sir.

Mr. SANFORD. That is all.

Redirect examination by Mr. SHEPHERD:

Q. Mr. Justice, were you sent for at the county jail on the occasion when they attempted to lynch Johnson?

A. Do you mean from St. Elmo?

Q. No. Did not somebody send for you to come up to the jail?

A. A party came for me. There was two men came for me.

Q. When you got to the jail you were put on the committee to go through the jail, were you?

A. Yes, sir.

763 Q. And afterwards you made a speech with a view to dispersing the crowd?

A. Yes, sir.

Mr. SANFORD. Do not lead the witness.

By Mr. SHEPHERD:

Q. Who was present and heard that?

A. Well, there was Mr. Warrier, (?) a policeman, and lots of people that knew me, that was present. I don't know all of them. Mr. Riordan and H. Clay Evans came down on Walnut street there by Sixth street, where I was; and Judge McReynolds and State's Attorney Whittaker came over a while and met me and shook hands. They went away, and H. Clay Evans and Mr. Riordan came along and Mr. Evans asked Riordan——

Mr. SANFORD. I object to any conversation.

By Mr. SHEPHERD:

Q. I will ask you to state whether Dr. Sutton was there?

A. Yes, sir.

Q. And whether he heard your remarks to the crowd?

A. Yes, sir.

Q. What is your size?

A. My size?

Q. Yes.

A. About six feet one in height.

Q. What is your weight?

A. 215 I weigh now. It has been 236 up until this warm weather started in.

764 Q. Were you at the time of this lynching a clean-shaven man, or did you wear a moustache like you have now?

A. I wore a moustache, except that it was longer than it is now. I have had them cropped the last two or three times. Some get a little longer than they are now, and I had Mr. Strelitz down here trim them some and even them up.

Recross-examination by Mr. SANFORD:

Q. Who was it that came for you that time?

A. Mr. Riordan and Mr. Evans came down on the street where I was.

Q. What Mr. Evans.
A. H. Clay Evans is the way I know him.
Q. Somebody came out to St. Elmo and got you?
A. Did what?
Q. Did you not say that somebody came to St. Elmo to get you?
A. No, sir.
Q. They did not go to St. Elmo?
A. No, sir; they came down the street to Walnut and Sixth.
Q. Who is the Mr. Riordan. What is his first name?
A. Sam Riordan.
Q. Did they come to you to take you to jail? You did not mean that, did you?
A. No; they just came down to where I was standing on the street and asked me to go up and try to disperse the crowd.
765 Q. Did you not say that two people came for you, out to St. Elmo?
A. No, sir.
Q. You did not mean that?
A. No, sir; and I didn't say that neither.
Q. Did you say that two men came up where you were in town, and got you and took you down to the jail?
A. They didn't take me. They just asked me.
Q. Who were the two men?
A. Mr. Evans and Mr. Riordan.
Q. You say Mr. Evans and Mr. Riordan came and asked you to go down to the jail?
A. Yes, sir.
Q. You swear that it was on the night of this attempted lynching?
A. Yes, sir.
Q. What is Riordan's name?
A. Sam Riordan.
Q. Where was that?
A. I was standing below the jail, close to Sixth street, on Walnut, I think, just below the jail there, pretty close to Sixth, out in the middle of the street.

Mr. SHEPHERD. Mr. Commissioner, that closes the case for Mr. Justice, with the exception that we reserve the right, if we get Mr. Ralston, to call him as another witness.

Mr. DANIELS. I have some witnesses here on behalf of Mr. Marquette, and it will be almost impossible to get them back. We
766 have a physician, and a machinist, and a druggist here. Their testimony will be very short and I would like to introduce them now. We will not be able to close, but I desire to introduce what we have.

The COMMISSIONER. If it will not take very long we might as well hear it.

Mr. CLIFT. I think we had better adjourn.

Mr. DANIELS. The balance of you may go. It will not affect anybody but Mr. Marquette.

Mr. CLIFT. But we want to hear the testimony.

Mr. DANIELS. I would like to appeal to you gentlemen on this ground. I have promised to hold court next week for Attorney-General Whittaker. For that reason I want to get through all I can to-day, so that it will only take a few minutes to close it.

The COMMISSIONER. Proceed.

Testimony on behalf of the defendant, William Marquette.

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798 CHATTANOOGA, TENNESSEE,
June 17, 1907.

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland, and counsel for the various defendants.

DR. COOPER HOLTZCLAW, a witness produced on behalf of the defendant, William Marquette, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. DANIELS:

Q. How long have you been a resident of Chattanooga?

A. Twenty-three years.

Q. How long have you practiced medicine and surgery in the city of Chattanooga?

A. Twenty-three years.

Q. Have you any connection with the Erlanger Hospital in this city?

A. I have, sir; I am staff surgeon there.

Q. Have you any connection with the Nashville, Chattanooga & St. Louis Railway?

A. I am surgeon for that road.

Q. Are you acquainted with the defendant, William Marquette?

A. I am, sir.

Q. How long have you known him?

A. Eight or ten years.

799 Q. State whether or not you have been his family physician for a number of years.

A. I have.

Q. State whether or not you have frequently treated him; and if so, for what disease?

A. I have; asthma.

Q. State whether or not you saw him on the night of March 19th, 1906; and if so, where and at what time?

A. I did. He was at my office. I came in late, after supper called, you might say. I came in about 9 o'clock and found him waiting there for me, suffering very badly with asthma.

Q. Who else was in the office at that time, Doctor?

A. My partner, Dr. E. C. Johnston, and a student by the name of Crumb. Marquette was wheezing very badly with asthma, leaning over this way [indicating], and seemed to be suffering quite a good deal. I asked him to come into my private room. He said: "No, you haven't had your supper yet," and he said, "Go on and get your supper; I will wait." So I went in my dining room and got my supper. I was there, I suppose, ten or fifteen minutes, and then came back and prescribed for him; took him in my back office, my private office.

Q. Did you give him an original prescription or did you tell him to get an old prescription refilled?

A. I told him to get an old prescription refilled. Then when I got through with him I found there was a call on my desk to go up on Lindsay street.

Q. Now, Doctor, about how far could you hear Marquette
800 talking that night? What was the condition of his voice?

A. Well, he was wheezing quite a good deal, like a bellowsed horse, and one couldn't hear him very far off, more than, I should think, ten or fifteen feet or something like that. When he gets these asthmatic spells you can hardly hear him talk; it is almost in a whisper. People with asthma like he has can't articulate or phonate well.

Q. State whether or not he was in that condition that night.

A. He was.

Q. Now, what time did you leave your office, and state whether or not Marquette stayed at your office or left with you, or how that was?

A. I suppose it was 15 or 20 minutes after nine, after I got through with him. Then I went out making other calls.

Q. Do you know where he had been getting these prescriptions filled that you had been giving him; at what drug store?

A. At Miller's.

Q. Robert J. Miller's?

A. I think it was the other Miller, at the corner of Georgia avenue and 8th. I am not certain, though, about that.

Q. When you left where did you go?

A. I went up on Lindsay street to see Mr. Charles Bickers. I found that he had gone to bed and was very much better, and I didn't stay there but a few minutes.

Q. What did you do then, Doctor?

801 A. I went on down Lindsay street and I met my brother-in-law, who said that somebody had telephoned to him that there was a mob at the jail. We went up to the jail and found everything empty. As we were standing there we heard shots down towards the river. Then we walked up Walnut street and then down Walnut street and got on a street car, and the street car went slowly up to the bridge, and when I got off—do you want to know the whole transaction?

Q. Yes.

A. As I got off the car at the south end of the bridge, some one hollered out that they didn't think the man was dead. "There is Dr. Holtzclaw; get him to come there and see if the man is dead." I had a professional interest in examining a man who had been hung, and when I went up to him I found that he had been shot to death instead of hung; so then my professional interest ceased. I turned around and went on back home.

Q. Do you know what time in the night that was, that you were up there?

A. It was between half past 9 and 10, I should think.

Q. That you were up at the bridge?

A. Yes.

Q. Now state whether or not it was published in the Chattanooga Times on the following morning that you had been at the bridge the night before.

A. Yes, sir; it was.

Q. State whether or not, on the following morning after the lynching of Ed. Johnson, you met the defendant Marquette, and if
802 so, where; and what conversation, if any, you had with you in relation to the proceedings of the night before.

Mr. SANFORD. I have no objection to the testimony as to his meeting him, but I object to the question which calls for a conversation as incompetent and irrelevant, and I object to the answer that may be given.

The COMMISSIONER. The objection will be noted.

Q. (By Mr. DANIELS.) I will ask you to state whether you met him on the following morning after the lynching; and if so, where?

A. I did, sir; at Miller's drug store on the corner of Georgia avenue and 8th street. I was going there after some medicine, some drugs.

Q. Where is that in relation to the Times Building?

A. Right across the street.

Q. What was his physical condition at that time?

A. He was still asthmatic.

Q. What, if anything, did he say to you at that time about seeing that you had been up at the lynching?

Mr. SANFORD. I keep up the same objection.

Mr. DANIELS. That is all right.

The COMMISSIONER. Note the objection.

Q. (By Mr. DANIELS.) Go on, Doctor, and answer the question. What, if anything, did he say to you when he met you there at the drug store, about seeing that you had been up to the lynching?

Mr. SANFORD. The same objection.

A. Why, he guyed me. He says: "I am surprised that you
803 should be at a lynching;" that he had seen my name in the paper, and said that he was surprised to see that I had been up at the lynching, and he said: "Now look out, old fellow; you are going to get yourself in trouble about this." I said yes, I was there, and that I was sorry of it; that I went there merely in a professional capacity, and it never had occurred to me in the light in which he

put it. It angered me; it annoyed me. I never had thought of it in the way in which he put it. That is how I came to remember the circumstance, because I had never thought of it in that light before. It annoyed me.

Q. What, if anything, was said in that conversation as to where Marquette was the night before?

Mr. PENLAND. You do not insist on conversations like that being competent, do you, Mr. Daniels?

Mr. DANIELS. It is just simply to refresh his recollection, giving a reason why he knows where he was the night before.

Mr. SANFORD. We desire to note the same objection as heretofore to any conversation on the next day.

Mr. DANIELS. All right.

The COMMISSIONER. The objection will be noted.

Q. (By Mr. DANIELS.) Go on, Doctor.

A. When he accused me of being there and guyed me about it, I asked him if he was not there. He said: "Well, I look like a man being there, when I could hardly walk and couldn't breathe." And he was still asthmatic then.

Q. State whether or not you recollected then as to where he was the night before.

804 A. I did, because I asked him about his physical condition, and he was still asthmatic. He had not recovered from his attack.

Q. Doctor, state whether or not you have any doubt in your own mind as to whether Mr. Marquette was at your office on the night of that lynching.

Mr. SANFORD. I object to that question as leading.

The COMMISSIONER. The objection will be noted.

Q. (By Mr. DANIELS.) Answer the question.

A. No doubt at all, sir.

Q. State whether or not you have treated him since for this same trouble.

A. Yes, sir. He had an attack of it every few months.

Q. State whether or not, in your opinion, he was physically able to participate in a mob on the 19th of March, 1906.

A. I don't think he could. He was very short of breath when he was at my office, and he was still the next day, when I saw him at the drug store.

Q. State whether or not at any time he is a strong, robust man.

A. No; I don't think he is.

Q. About what is his size and weight?

A. He is 5 feet 6½, I should judge, and weighs probably 123 pounds. That would be my idea about it.

805 Cross-examination by Mr. SANFORD:

Q. Doctor, how much physical energy does it take to participate in a mob? If a man can walk to your office could he not walk up to the bridge and participate in a mob?

A. According to where he started from.

Q. Was he not, in your opinion, strong enough to walk from your office up to the bridge that night?

A. He could if he would take it by very slow stages.

Q. The street car went pretty near there, did it not?

A. It went across the bridge.

Q. How close did the street car line run from your office that led to the bridge?

A. About half a block. I don't know whether that line was running then or not.

Q. What other line was running?

A. The line that runs down 4th street up to Walnut and then to the bridge.

Q. How far was that from your office?

A. That is five or six blocks. That is on the other side or down the hill—down that high hill.

Q. As a matter of fact, did not Marquette have physical energy enough that night to have walked to the bridge if he had so desired, in your judgment?

A. If he had had the desire, but——

Q. I am not asking you, of course, about his desire, but simply as to his physical capacity to walk there if he had wanted to.

806 A. Making a personal matter of it, I shouldn't think I would have gone anywhere much except home.

Q. I do not mean that, Doctor. You misunderstand me.

A. I beg your pardon, sir.

Q. I merely wish to ask whether, in your opinion as a physician, seeing Marquette the night before, as you say, he did not have sufficient physical energy and physical strength to have gone up there to that bridge and participated in the lynching if he had wanted to?

A. By an extreme exertion he could have done so. The reason that he came to my office was for relief of the terrible condition from which he was suffering.

Q. That is asthma?

A. That is shortness of breath, and walking simply makes them very short of breath, especially walking up hill.

Q. I see. Now, Doctor, how long were you there at the bridge?

A. I suppose I was there ten minutes—five minutes.

Q. How many people were there?

A. I guess there were 30 or 40 people there.

Q. Where was Ed. Johnson's body when you got there?

A. His body was lying to the north side of the second electric light on the sidewalk.

Q. It was down?

A. Down flat on the sidewalk, with his head turned north.

Q. You examined the body?

A. I did, sir.

Q. How many people were around when you examined the body?

807 A. I suppose there were ten or a dozen—as many as could crowd around.

Q. Did it show marks of hanging as well as shooting?

A. I thought not; and as soon as I found that he did not die from hanging—at least that was my opinion—my professional interest in it ceased.

Q. How many bullet holes were in him?

A. I found five or six. I didn't examine any more.

Q. You saw five or six?

A. Yes; any one of which I considered would have produced death.

Q. Who called on you to examine him?

A. I don't know; some one from the crowd, as I got off the car.

Q. Whom did you recognize there, Doctor?

A. I recognized only two—three people.

Q. Who were they?

A. One was Lewis Hatcher, who was standing on the edge of the bridge, another was Andy Ware, and the other was Bob Pritchard, who I think went up there with me—Bob Pritchard, junior. He got there the same time I did.

Q. He was then a reporter for the Chattanooga Times?

A. I don't know. I think he was either on the car with me or he was there at the edge of the bridge and went up there to the bridge with me, and then came on back to town with me.

Q. Did you see anybody knock him down?

A. Bob Pritchard?

Q. Yes; did you see when he was knocked down there?

808 A. No, sir; I did not.

Q. Did you hear anything about it at the time, as to who knocked him down?

A. I did not.

Q. You did not?

A. No, sir.

Q. Did you hear the names of anybody that took part in the mob, the lynchers, called at that time?

A. I did not. All that I heard there was—I remarked that this man was shot to death and not hung. My idea was that when he was drawn up the mob fired their pistols and the balls cut the rope and he fell down. Now I heard some one remark, I don't know who, in the crowd, that after he fell he commenced wiggling, and a tall man, a dark-haired man, came up and emptied his pistol into his body within two or three feet.

Q. After he was on the ground?

A. After he was on the ground.

Q. You did not see that, though?

A. No, sir; he was dead when I got there.

Redirect examination by Mr. DANIELS:

Q. Doctor, did you get a piece of the rope up there that night at the hanging?

A. Yes, sir. Some one was cutting him loose, and cut off several pieces of rope and handed them to people around there.

809 Q. State whether or not you had that piece of rope in the drug store the next morning when you were talking to Marquette?

A. I did.

Q. State what you did with it.

A. I gave it to the druggist who was talking with myself and Marquette. Marquette took the rope and examined it and found a dark spot on it, and either he or the druggist asked me if that was not blood. I remarked that I thought probably it was.

By Mr. PRITCHARD:

Q. How long did you say you had lived in Chattanooga?

A. Twenty-three years, sir, the 1st of last April.

Q. You had been here continuously from the time of the alleged rape to the lynching of Johnson, had you?

A. Yes, sir.

Q. You have an active practice covering a considerable territory here in Chattanooga?

A. Quite considerable.

Q. Were you during that period mingling with the people, your patients, and the citizens generally?

A. Yes, sir; quite promiscuously.

Q. I will ask you, Doctor, whether or not you knew the state of the public feeling and mind during that period?

A. Yes, sir.

Q. Was there or not much excitement at the time of the commission of the crime and at the time of the first attempt to lynch Johnson?

A. Yes, sir; there was very considerable right at the time,

810 and quite a number of people had talked with me about violence and negro mobs rising, but on that night when it was expected it was too cold and they wouldn't come out.

Q. The weather was too cold?

A. Yes, sir.

Q. That was the night after the attempt to lynch Johnson?

A. Yes, sir.

Q. The attack that you speak of, then, was not confined to one race, but to both?

A. Both; yes, sir.

Q. How long did that state of excitement continue?

A. Why, it passed off in just a few days—four or five days—a week, or something like that.

Q. What was the state of the public mind at the time that Johnson was actually lynched?

A. Well, it was in rather a quiescent state, to the best of my knowledge and belief—quite quiescent.

Q. Was there anything, to your knowledge, to indicate that a lynching was imminent or was to be expected or anticipated in any way whatever?

A. No, sir; so far as I knew and so far as I could gather from my traveling around, the thing had rather subsided—the feeling.

Q. Doctor, how long have you known Capt. J. F. Shipp?

A. Twenty-three years, sir.

Q. Do you know the people with whom he associates and the citizens of the town generally here?

A. Yes, sir.

Q. Do you know his general reputation in the community?

811 A. Yes, sir.

Q. What is that reputation—good or bad?

A. It is excellent.

Recross-examination by Mr. SANFORD:

Q. Doctor, there was a great deal of public excitement during all the trial of Johnson, was there not?

A. Quite considerable.

Q. It was found necessary to use unusual and extra precautions to protect him, to put guards around the court-house and guards around the jail and all that sort of thing, was it not?

A. I think so, sir. I was not there.

Q. And the danger was that the lawless element, fearing that he might escape through delays, would take the matter into their own hands and lynch him? That was the apprehension, was it not?

A. I think so, sir. I know I was stopped two or three times in my professional calls going by the court-house, where they wouldn't let me go by. I had to go around another block.

Q. You could not even go by the court-house?

A. No, sir.

Q. And it was on account of the fact that they feared that the lawless element, if there was delay, would take the matter into their own hands?

A. That was the presumptive evidence.

Q. The delay was the thing to be feared, as likely to

812 lead to mob violence, was it not?

A. Possibly so.

Q. That is a fact; that is what you understood?

A. That was the presumptive evidence.

Q. And the general feeling was that if this thing was delayed there was going to be danger?

A. Yes, sir.

Q. And it was on account of that fact that all these extra guards and precautions were necessary, as you understood it at that time?

A. Yes.

Q. Then, when Johnson was sentenced, and it was thought that he was going to be hung speedily, the excitement subsided?

A. I thought so, sir.

Q. It was allayed, at least?

A. I thought so.

Q. It had not entirely disappeared, but had been allayed?

A. I thought so from what I could gather.

Q. Doctor, is it not a fact that, knowing the condition of the public mind and the apprehension that had existed before on account of delay, the moment it was announced that the supreme court had granted a stay of execution, which meant a considerable delay, a reasonable man would have ground to believe that that would renew the danger of a lynching and of the lawless element taking the matter in their own hands?

A. Well, I considered at the time, from what I could gather,
813 that it was only a temporary expedient of the law, and that the law would eventually take its course.

Q. Yes; but was not what the lawless element was after a speedy execution, and was not the thing that was to be apprehended that whenever there was to be delay the mob would take the thing in their own hands? Is not that a fact, Doctor?

A. If you please, sir, it was not only the lawless element, but it was every element that wanted a speedy examination of the——

Q. I understand; but it was only the lawless element that expected to take the matter in their own hands even if the court did grant a delay, was it not? The law-abiding people did not intend to do that?

A. The law-abiding people——

Q. Did not intend to take part in the lynching, certainly?

A. And everybody else wanted a speedy execution of the case.

Q. That is true; but it was to be apprehended, was it not, that if there was not a speedy execution and a speedy trial and a speedy settlement, the lawless element in the community would lynch Ed Johnson on account of that delay?

A. I did not consider that myself. I did not hear any talk of that, because it was merely thought, so far as I could gather, that it was merely a legal delay which would be overcome in two or three days.

Q. Why, you knew that when it was taken to the Supreme Court it meant several months at least, did you not? Everybody knew that, did they not?

A. I didn't consider it so.

814 Q. Did not the papers announce it? Don't you remember reading in the Chattanooga papers that morning or that afternoon about the delay that was going to result, and was it not generally understood in the community that that meant a long delay, and was not that the very thing that they had been trying to avoid?

A. That was what they wanted to avoid; but my understanding about the case was that it would not take long to decide this, under the peculiar circumstances.

Q. Suppose you are mistaken in that, and suppose it would have meant a considerable delay. As a reasonable man, if you had known that that meant a considerable delay, would you have not apprehended more danger from the lawless element taking the matter into their own hands?

A. I should think so; yes.

Q. And you would have felt that if precautions had been necessary to protect the prisoner before, they would be still more necessary after the fact of this delay had been made public, would you not?

A. I would have thought so.

Mr. PRITCHARD. We want to interpose an objection to what the witness would have supposed upon an assumed state of facts.

The COMMISSIONER. Note the objection.

By Mr. PRITCHARD:

Q. Mr. Sanford asked you about the delay. I will ask you to state if there had been any delay before this first attempt to lynch Johnson?

815 A. I think so; yes, sir.

Q. There had been several delays, had there not, namely, when Johnson applied to the Supreme Court and when he also applied to Judge Clark; but no violence had resulted?

A. I think so.

Q. There had been no mobs then?

A. No, sir.

Q. And this last application, you say, made no impression whatever, so far as you know, upon the public mind, toward producing any mob violence?

A. I think not.

By Mr. SANFORD:

Q. And during all that time, Doctor, is it not a fact that he had had a heavy extra guard—during that trial and during all the time? Do you not know as a fact that it was thought necessary to keep him under these heavy extra guards all the time in order to protect him?

A. I did not know that, sir.

Q. You did not know that?

A. No, sir. All I knew about the extra guards was when they made me go around two or three blocks.

* * * * * * *

870 CHATTANOOGA, TENNESSEE,
June 18, 1907.

The hearing was resumed at 9 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland; and counsel for the various defendants.

Testimony on behalf of the defendant William J. Mays.

Mr. SHEPHERD. This evidence that I will now offer is in behalf of the defendant William Mays and I wish to ask the Attorney-General if I may treat as in evidence in his behalf the testimony of the impeaching witnesses of Stonecipher, the same witnesses that impeached Stonecipher in Handman's case.

Mr. SANFORD. That will be all right, Judge, provided that we may, if we desire, recall Dr. Boyd and your witness Cox for further cross-examination.

Mr. SHEPHERD. That is quite agreeable to us. Then the testimony of the witnesses examined to impeach the testimony of J. N. Stone-cipher is to be considered as offered in behalf of the defendant Mays.

WILLIAM J. MAYS, a witness produced on his own behalf, having been first duly sworn by the commissioner according to law, testified as follows:

871 By Mr. SHEPHERD:

Q. Mr. Mays, are you one of the defendants in this case?

A. I suppose so; yes, sir.

Q. You were arrested under this information?

A. Yes, sir.

Q. Do you remember the night that Ed Johnson was lynched?

A. Yes, sir.

Q. I want you to tell where you were in the afternoon before the lynching and up until 6 or 7 o'clock that night.

A. I was at Turner Hall, on Cherry street.

Q. What time did you go to Turner Hall?

A. About half past 11 o'clock in the morning.

Q. How long did you stay at Turner Hall?

A. From half past 11 till about 5.30, when I left there.

Q. Who was with you there?

A. Mr. Padgett.

Q. The defendant, Henry Padgett?

A. Yes, sir.

Q. What were you doing in Turner Hall?

A. I was down at Turner Hall about half past 11, and he suggested going in and having a glass of beer and a bowl of soup. They were serving soup at that time there. So we went in and took a glass of beer and a bowl of soup, and sat down and joined a game of cards.

872 We stayed there and played cards till about 5.30, I suppose, when I left the saloon.

Q. When you left the saloon at 5.30 where did you go?

A. I went directly home.

Q. Where did you live at that time?

A. 313 Poplar street.

Q. If any accident happened to you on your way home or going up the steps to your house, state what that was.

A. I remember going up the stone steps running from the sidewalk; there are about 8 or 9 steps and a stone wall, and out at the side it was about 6 or 7 feet high. I stumbled on those steps and struck my face against the stone wall and knocked the skin off my nose a little bit.

Q. You were somewhat intoxicated then, were you not?

A. Yes; I had been drinking. I had a glass of beer occasionally.

Q. What became of you after you fell and knocked the skin off your nose?

A. I went right on into the house.

Q. Where did you stay that night?

A. I went into the house and stayed, and didn't go out of the house any more that night.

Q. When did you first hear that Johnson had been lynched?

A. The next morning about 7 or 8 o'clock, just before we had breakfast.

Q. If there is any reason why you remember that that occurrence was on the same night that Johnson was lynched——

A. Yes, sir.

873 Q. Tell us what that was. What makes you remember that it was that night?

A. Why, the next morning about 7 o'clock, Mr. Lieb, that runs the baker's shop, my son-in-law, telephoned and asked me if I had heard the latest. I said, "I don't know what you mean."

Q. You need not tell what he said.

A. He said, "They lynched Johnson last night."

Mr. SANFORD. We object to the testimony as to what he said. You did not ask for that, I understand.

Mr. SHEPHERD. No; that is not competent.

By Mr. SHEPHERD:

Q. I will ask you to state whether or not you were at or about the county jail at all on the night that Johnson was lynched.

A. No, sir.

Q. Were you at or about the bridge where he was lynched?

A. No, sir.

Q. I will ask you to state whether or not you had any conversation with John N. Stonecipher, a witness who testified heretofore in this case, on the day succeeding the lynching?

A. No, sir; I did not.

Q. Did you have any conversation with him the day before the lynching?

A. No, sir.

Q. State whether or not you told Stonecipher, or said in the presence of Stonecipher, that you got your nose skinned breaking the jail open to lynch that nigger the night before.

874 A. No, sir; I don't remember it. I didn't have any conversation with Mr. Stonecipher at all.

Q. And you had nothing to do with the lynching of Johnson at all?

A. No, sir.

Q. State whether or not you aided or abetted or encouraged anybody else in that lynching.

A. Nobody at all; no, sir.

Q. Did you know that there was a likelihood that Johnson would be lynched that night?

A. No, sir; I did not.

Q. Who of your family knows that you were at your home that night?

A. My daughter, Mrs. Lieb.

Q. Where is Mrs. Lieb?

A. She is at home.

Q. I will ask you to state what her condition is.

A. She is not able to come to court.

Mr. SANFORD. We object to testimony as to what his daughter may know.

Mr. SHEPHERD. I know; I am not asking that. I just want to account for her absence; that is all.

By Mr. SHEPHERD:

Q. She is about to be confined, and can not be here?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. What is your business?

A. Carpenter.

875 Q. What other business have you been in?

A. That is all the business I have followed.

Q. How long have you been a carpenter?

A. About 12 years.

Q. You are a friend of the defendant Padgett?

A. Yes, sir; I work with him.

Q. How long have you known him?

A. Ten or twelve years.

Q. Is he a carpenter?

A. Yes, sir.

Q. How long have you known Stonecipher?

A. I suppose 12 or 14 years.

Q. Is he a carpenter?

A. Yes, sir.

Q. And contractor?

A. Yes, sir.

Q. Are you a friend of his?

A. I have worked with him, jobbed with him. I have been with him quite a number of times.

Q. What work were you doing on that Monday, before the lynching?

A. I wasn't doing anything at all.

Q. You were not doing anything?

A. No, sir.

Q. Had you been doing anything that last week?

A. No, sir. I had the week before.

Q. What work had you done?

A. We had worked on carpenter work up on Georgia avenue.

876 Q. Whom were you working with?

A. With Mr. Padgett.

Q. When did you quit that work?

A. We quit there, I believe it was on Friday or Saturday.
Q. And then you had nothing to do the next week?
A. No, sir.
Q. Did you know Handman—Alf Handman?
A. No, sir.
Q. You did not know him?
A. No, sir.
Q. Where did you first meet Padgett on the morning of the lynching?
A. At his house.
Q. At his house?
A. Yes, sir.
Q. How far does he live from you?
A. Why, I suppose half or three-quarters of a mile.
Q. How did you happen to go up there?
A. I went up from my house on 4th street to where he lived.
Q. I say, how did you happen to go?
A. Over to Mr. Padgett's?
Q. Yes.
A. Why, we had an agreement to go over and figure on some work.
Q. Had you read in the morning Times that there was to be an appeal or stay granted in the Ed Johnson case?
A. No, sir.
877 Q. The morning paper had stated, had it not, that the Supreme Court had given an appeal or stay of execution? You had seen that account?
A. Oh, yes, sir.
Q. And after you saw that in the paper you went up to see Padgett?
A. No, sir; not that I remember of.
Q. Well, you read the morning paper before you left your home, before you went up to see Padgett; that is true, is it not?
A. No, sir. I never read the morning paper that morning. I never saw Mr. Padgett the next morning at all.
Q. I am talking about Monday morning. After you read the paper Monday morning, and saw that the Supreme Court had given an appeal, then you went up to see Padgett?
A. No, sir; I didn't read the paper at all that Monday morning?
Q. You did not read the paper at all that Monday morning?
A. No, sir.
Q. You remember that you did not read the paper Monday morning?
A. Yes, sir.
Q. Do you not usually read the morning paper?
A. No, sir.
Q. When you are going off to work you do not read it, of course, because you have to go early; but when you stay at home and have nothing to do, don't you read the morning paper then?
878 A. I have read the morning paper sometimes; not often.

Q. You did not read it that Monday?
A. No, sir; I didn't.
Q. But you went up to see Mr. Padgett?
A. Yes, sir.
Q. Did you find him at home?
A. Yes, sir.
Q. What did you and he do together?
A. We figured on a job.
Q. What time did you go to his house?
A. Between 9 and 10 o'clock.
Q. In the morning?
A. Yes, sir.
Q. How long did you stay there with him?
A. I stayed there till about 11 or half past.
Q. Figuring all the time?
A. Yes, sir.
Q. Did you have anything to drink?
A. Yes, sir; we had a glass while we was up there.
Q. A glass of what?
A. Whiskey.
Q. How many glasses did you have?
A. One.
Q. Did you have a flask or did he have a flask?
A. He did himself.
Q. He had a bottle up there at his house?
A. Yes, sir.
Q. You took one drink apiece of whiskey?
A. That is all; yes, sir.
879 Q. Then where did you go?
A. We came from there down to Turner Hall.
Q. How far is that from his house?
A. I suppose about six blocks.
Q. Whom did you meet down there?
A. We didn't meet any one, only just walked in the saloon.
Q. Turner Hall is a saloon, is it?
A. Yes, sir.
Q. I thought it was a lodge room. Who runs that saloon?
A. I don't remember.
Q. What street is that on?
A. It is on Cherry street.
Q. That was before dinner—before noon?
A. Well, just about 12 o'clock, when we got down there.
Q. And you took another drink down there, did you?
A. Yes, sir.
Q. How many drinks?
A. I couldn't say. We just sat there all the afternoon.
Q. How many drinks did you take?
A. I couldn't remember.
Q. Did you take a half a dozen drinks or a dozen?

A. I suppose we did.
Q. Whiskey?
A. No, sir; beer.
Q. And you were talking about the Ed Johnson affair, were you not?
880 A. I never heard Ed Johnson's name mentioned during the day.
Q. How many people came into the saloon?
A. I couldn't say, sir.
Q. Did many people come in?
A. There seemed to be a crowd there.
Q. Did you talk to anybody else besides Padgett?
A. No, sir.
Q. Were you and Padgett sitting there drinking all the time?
A. Playing cards and taking a drink occasionally.
Q. You took half a dozen drinks of whiskey, you think?
A. Not whiskey.
Q. Well, beer; half a dozen bottles of beer?
A. Yes, sir; about half a dozen.
Q. How much whiskey?
A. I might have taken one or two drinks of whiskey.
Q. You might have taken one or two drinks of whiskey, and half a dozen bottles of beer?
A. No, sir, not bottles; glasses—small glasses.
Q. How much did Padgett take?
A. Why, of course, I couldn't say.
Q. Is he a hard-drinking man?
A. I don't know, sir, about that. He drinks; I don't know anything about how much he drinks.
Q. You are a friend of his, are you not?
A. Yes, sir.
Q. And you do not know his drinking habits. Is he a hard-drinking man?
881 A. I don't know, sir.
Q. Is he a light drinking man?
A. I suppose he takes a drink like myself.
Q. He is not a total abstainer?
A. No, sir.
Q. You were not figuring on your plans down there, were you?
A. No, sir.
Q. But you did not talk about the Ed Johnson case?
A. We did not.
Q. Had you read the morning paper by that time—by 4 or 5 o'clock in the afternoon?
A. No, sir.
Q. You had not read the morning paper at all?
A. No, sir.
Q. When did you leave this saloon, this Turner Hall?
A. It was about half-past five o'clock, I suppose.

Q. How do you happen to remember leaving that saloon about half-past five?

A. Well, I just told Mr. Padgett I was going home, and got up and left the saloon.

Q. How do you remember that? It is over a year now. How do you happen to remember when you left that saloon that afternoon?

A. I just remember it on account of the next morning, because this thing occurred.

Q. You did not know at that time that this particular thing was going to occur, did you?

A. No, sir.

882 Q. There was nothing at that time to fix it in your memory?

A. No, sir.

Q. Did not you and he talk over the Ed Johnson matter and arrange to meet that night?

A. No, sir.

Q. You did not do that?

A. No, sir.

Q. How often have you and he been to that saloon together?

A. How is that?

Q. How often had you and Padgett been at that particular saloon?

A. Why, occasionally; not very often.

Q. Was that your favorite saloon?

A. No, sir.

Q. Had you ever met there before?

A. Yes, sir.

Q. Did you ever sit there and play cards and drink with him before?

A. Yes, sir.

Q. Do you remember the last time before that that you had met him there?

A. I don't remember the day.

Q. Do you remember what time you got there the time before?

A. I don't remember the day or the date.

Q. You do not remember when you got there, do you?

A. No, sir.

883 Q. And you do not remember when you left?

A. No, sir.

Q. Can you remember any particular day that you were in the saloon with Padgett before this one occasion?

A. Why, I didn't pay any attention to it; no, sir.

Q. And yet you remember this particular time, and when you got there, and when you left?

A. Yes, sir.

Q. Can you state why you remember it as different from all the others?

A. Why, from the next morning, you know.

Q. What did your being in the saloon at 5 o'clock in the afternoon on the day before have to do with the next morning? Nobody accused you the next morning, did they, of being in that mob?

A. No, sir.

Q. When did you first hear that you were accused?

A. When I was subpœnaed.

Q. That was the first you heard of it?

A. Yes, sir.

Q. What had there been in the meantime to connect your mind with where you were at 5 o'clock the day before the Ed Johnson lynching?

A. I don't remember.

Q. You do not remember anything that occurred particularly to connect the two in your mind?

A. No, sir.

Q. When did you go to work again?

A. Why, I don't just remember now.

884 Q. Was it several days? You did not work that week, did you?

A. I am not positive now when I did go to work.

Q. Do you remember what you did that next day? Did you work the next day?

A. No, sir.

Q. Did you work the day after that?

A. Not that I remember.

Q. Do you remember how it was?

A. No, sir; I don't.

Q. Where did you take your supper the next night?

A. At home.

Q. Did you go back to that saloon and meet Padgett there the next day?

A. No, sir.

Q. You did not meet Padgett there at all?

A. No, sir.

Q. Did you met him at Ransom's saloon?

A. No, sir; I never saw him at all the next day.

Q. Do you know John Varnell?

A. Yes, sir.

Q. Is he a friend of yours?

A. I have known him quite a while.

Q. Is he a carpenter?

A. No, sir.

Q. What is he?

A. A policeman.

Q. How long have you known John Varnell?

A. Why, I suppose six or seven years.

885 Q. Did you not meet John Varnell at that saloon that afternoon?

A. No, sir; not that I remember.

Q. Now, try to recollect if you did not have a talk with John Varnell that afternoon.

A. No, sir; I did not.

Q. What time did you get home that night—Monday night?

A. Between 5 and 6 o'clock.

Q. Had they had supper?

A. It was dusk when I got home.

Q. Had they had supper?

A. No, sir.

Q. How many are there in your family?

A. Well, there is five in all.

Q. Who are they?

A. Mr. and Mrs. Lieb, myself, daughter, and son.

Q. Who is Mr. Lieb?

A. My son-in-law. We all lived in the house together at that time.

Q. What is his first name?

A. Albert.

Q. Albert Lieb?

A. Yes, sir.

Q. His wife is your daughter?

A. Yes, sir.

Q. Who else is there?

A. My son.

Q. How old a boy is he?

A. He is about 21.

886 Q. What is his name?

A. Tommy.

Q. Who else?

A. My wife; that is all.

Q. All of those are still living?

A. Yes, sir.

Q. Did all of them take supper there that night?

A. No, sir.

Q. Who took supper there that night?

A. Me and my wife and daughter.

Q. How do you happen to remember that neither of the others were there at supper that night?

A. Why, my son he wasn't in; he doesn't come in very early, and Mr. Lieb works so that he comes in late and goes out very early.

Q. Is that what usually happens, or do you remember about that particular evening?

A. That usually happens; it did at that time; yes, sir.

Q. You do not remember what happened on that particular evening, except that it was simply the usual way?

A. Yes, sir; that is the usual way of my home.

Q. But you do not have any distinct remembrance about that evening as different from any other evening, do you?

A. No, sir.

Q. What did you do after supper?
A. Went to bed.
Q. Didn't you go to the jail?
A. No, sir.
Q. Didn't you go to the county bridge?
887 A. No, sir.
Q. You did not?
A. No, sir.
Q. What time did you go to bed?
A. I went to bed early after supper.
Q. What time did you go to bed after supper?
A. About seven o'clock. I usually go to bed very early.
Q. You did not go out after supper?
A. No, sir; I did not.
Q. When you go to a saloon and take drinks you do it in the day, do you?
A. Yes, sir.
Q. You do not do it at night?
A. No, sir.
Q. You did not go back and meet Padgett and take some more drinks after supper?
A. No, sir; I did not.
Q. Did you meet John Varnell that night?
A. No, sir.
Q. You went to bed at seven o'clock?
A. Between six and seven o'clock; somewhere along there; very early.
Q. What time did you get up the next morning?
A. About six.
Q. Did you sleep twelve hours?
A. I sleep as near it, I expect, as I can.
Q. Are you in the habit of sleeping twelve hours at night?
888 A. I am in the habit of sleeping more hours than, I expect, anyone in the city.
Q. Are you in the habit of sleeping twelve hours?
A. I wouldn't say that much.
Q. But you slept 12 hours that night, you say?
A. I don't know that I did. I went to bed early.
Q. You went to bed between 6 and 7 and did not get up until 6 the next morning?
A. Something like that.
Q. It must be that you are in the habit of going to bed between 6 and 7 every night?
A. Yes, sir.
Q. That is your habit, is it?
A. Yes, sir.
Q. You did not read any after supper?
A. No, sir. I can't see to read.
Q. What time did you go to bed last night?

A. About half past five.
Q. What time did you get up this morning?
A. 5.30.
Q. Then you slept twelve hours last night?
A. I don't know whether I sleep all the time.
Q. But you go to bed?
A. Yes, sir.
Q. Do you remember that you went to bed at that hour that night, or is it because it is your habit to go to bed at that hour?
A. It is my habit to go to bed early.
Q. Do you remember, though, particularly? You break
889 that habit sometimes, do you not? You do sit up later than 5 or 6 sometimes?
A. No, sir; hardly ever.
Q. Sometimes you do?
A. I suppose so.
Q. You have sat up later than 6 o'clock in your life, have you not?
A. Why, it has been later, of course.
Q. Now, do you remember whether you were later or not on that particular night?
A. No, sir.
Q. You do not remember, as a matter of fact, anything about what time you went to bed, do you—you simply know it is your habit to go to bed early?
A. Yes, sir.
Q. But as to what you did that night, you do not remember?
A. I went to bed between 6 and 7 o'clock, I suppose.
Q. You had taken a good many drinks that day?
A. Yes, sir.
Q. Did you call in a doctor for that wound of yours?
A. No, sir.
Q. How severe a gash did you have?
A. Just a small scratch.
Q. You did not call in any doctor for it?
A. No, sir.
Q. What did you do for it?
A. Nothing at all.
890 Q. You did not go to any drug store and buy anything for it?
A. No, sir.
Q. Have you ever been in any trouble? Have you ever gotten in any trouble in the courts?
A. No, sir.
Q. Have you ever been indicted for anything?
A. No, sir.
Q. You never have?
A. No, sir.
Q. Did you ever have any fights?
A. No, sir.

Q. You never had a fight in your life?
A. Oh, I have had one or two little scraps.
Q. Did you ever get into the police court or magistrate's court about that?
A. I was in the police court one time, sir.
Q. What court was that?
A. Here in the city.
Q. A magistrate's court?
A. The police court.
Q. What was that about?
A. That was for having a scrap down on Market street.
Q. Having a fight?
A. Yes, sir.
Q. Were you ever taken up for anything else?
A. No, sir.
Q. For drinking?
A. No, sir.
891 Q. For disorderly conduct?
A. No, sir.
Q. Is that the only time you were ever taken up?
A. Yes, sir.
Q. When was that time that you had that scrap, as you say?
A. I don't remember.
Q. Was it several years ago?
A. A couple of years ago.
Q. Did not you and Padgett meet Stonecipher at the corner of Oak and Lindsay streets about half past four on Monday afternoon, the day of the lynching?
A. No, sir.
Q. You did not?
A. No, sir.
Q. Did you not meet Stonecipher the next morning in front of Ransom's saloon?
A. No, sir; not that I remember of. I passed him on the street, but I don't know where.
Q. Didn't you go to Ransom's saloon the next morning?
A. No, sir; I did not.
Q. Do you know Ransom's saloon?
A. Yes, sir.
Q. Is that one of the saloons you go to?
A. Yes, sir.
Q. Is that a saloon that Padgett is in the habit of going to?
A. I suppose quite a number of people go there.
Q. I am asking you more about Padgett now than I am
892 about other people. Is that one saloon that Padgett goes to?
A. I don't know, sir.
Q. He is a friend of yours?
A. Yes, sir.

Q. And you are in the habit of drinking with him, are you not?
A. Yes, sir.
Q. And you know where you drink. Do you drink at your house or his house or do you drink at Ransom's saloon?
A. We take a drink wherever we meet.
Q. Did you ever take a drink with him in Ransom's saloon?
A. Yes, sir.
Q. You have met him there?
A. Yes, sir.
Q. How many times have you had a drink with him in Ransom's saloon?
A. I don't know.
Q. You have several times, have you not?
A. Yes, sir.
Q. That is a place where he is in the habit of drinking, is it not?
A. I suppose so.
Q. You suppose it is?
A. Yes.
Q. Didn't you meet him there the next morning after the lynching?
A. No, sir; I didn't.
Q. Didn't you meet Stonecipher there?
893 A. No, sir; I didn't.
Q. Did not you and Stonecipher and Padgett have a conversation there together that next morning?
A. No, sir; we didn't.
Q. Did you go by there the next morning?
A. Yes, sir.
Q. You were not at work the next morning?
A. No, sir.
Q. Where were you going when you went by there?
A. Going up the street.
Q. Who was with you?
A. No one at all.
Q. Where were you going?
A. I was going up on 9th street.
Q. Where to?
A. West 9th street.
Q. Where to?
A. Looking after a job.
Q. Whose job?
A. I was going to figure on some work myself.
Q. Who for?
A. I have forgotten the name of the parties now. They was going to have some work done, and I went up to see if I could get the job. The house was being overhauled.
Q. Whom did you see up there?
A. I didn't see any one.
Q. Do you remember the house?
A. Yes, sir.

Q. What number was it?

894 A. I don't remember now.

Q. Where was it located?

A. It was on West 9th street, about four doors, I believe, from Market street.

Q. Which way?

A. West.

Q. West from Market street?

A. Yes, sir.

Q. On which side of West 9th street?

A. On the left.

Q. On the left as you leave Market street?

A. Yes, sir.

Q. About four doors from Market street, and the house was being overhauled?

A. Yes.

Q. Was it a one or two-story house?

A. A two-story house.

Q. Was it a frame house?

A. No, sir; it was a store house. They were going to make some changes in it.

Q. Whose store was it?

A. I don't know.

Q. Did the man send for you?

A. No, sir. I just heard there was some work, and I went up there and there was no one there.

Q. And you passed Ransom's saloon on the way?

A. Yes, sir.

Q. Didn't you go in there and take a drink?

A. No, sir; I did not.

895 Q. Did you see Padgett right there?

A. No, sir.

Q. Did you see Padgett when you went up to this store?

A. No, sir.

Q. Didn't you see Stonecipher there as you passed Ransom's saloon?

A. I never saw Padgett at all that night,

Q. Didn't you see Stonecipher as you passed that saloon?

A. I saw him; yes, sir.

Q. As you passed that saloon?

A. Yes, sir.

Q. What was he doing?

A. He was standing on the street.

Q. How far from Ransom's saloon?

A. Why, I don't remember whether he was in front of his saloon or the Stag saloon. I just remember passing him on the street.

Q. How close is Ransom's saloon to the Stag?

A. There is just one door between them.

Q. And you do not remember whether Stonecipher was in front of Ransom's or the Stag saloon?

A. No, sir.

Q. But you do remember seeing him?

A. Yes.

Q. Who was with him?

A. I don't know, sir.

Q. Was somebody with him?

A. There was quite a number of people all along there
896 on the street. I don't know who was with him or whether he was with anyone or not.

Q. Did you not stop and talk with him?

A. No, sir; I didn't; not that I remember.

Q. Do you deny that you stopped and talked with him?

A. I don't remember any talk with him at all.

Q. When did you first see Padgett after that lynching?

A. I don't remember now.

Q. You remember other things. Try to remember this.

A. Three or four days afterwards, I think. I asked him whether or not we got the work, and he said he didn't think we did.

Q. That was three or four days later?

A. Yes, sir.

Q. Along towards the end of the week?

A. Yes, sir.

Q. You did not take any drinks with him in the meantime?

A. No, sir.

Q. Did you see him Tuesday?

A. No, sir.

Q. Wednesday?

A. No, sir. I don't remember now whether—it was only in the latter part of the week.

Q. Where did you see him?

A. We was to find out about this job, you know, the latter part of the week.

Q. Where did you see him?

A. I don't remember now where it was.

897 Q. Did you take any more drinks with him?

A. No, sir.

Q. You did not meet him in a barroom this next time?

A. No, sir.

Q. You can not remember where you met him?

A. No, sir. He just told me that some one else got the work.

Q. I did not ask you about what he told you. How far is your house from the jail?

A. It is about five blocks, I suppose.

Q. Five blocks which way?

A. Northwest from the jail.

Q. How far are you from the bridge?

A. About four blocks.

Q. You are sort of between the two, on one side?
A. It would be northeast from where I live to the bridge.
Q. To the bridge?
A. Yes, sir.
Q. How many rooms are there in your house?
A. There is five rooms, I believe.
Q. Is it a one- or two-story house?
A. One story.
Q. How about the rooms? Tell us about the bedrooms in the house; who sleeps in the different rooms?
A. There is a hallway that runs through and three rooms on each side.

Q. Who stayed there at that house that night?
898 A. Why, my son and daughter and Mr. Lieb and my wife. I don't know what time they come in, either one of them.
Q. I did not ask you that. Tell us how the bedrooms are located. Where is your bedroom?
A. My bedroom is on the right.
Q. The first room?
A. The second room.
Q. On the right?
A. Yes, sir.
Q. Where is your son-in-law's bedroom?
A. The first room on the left.
Q. The first bedroom or the first room on the left?
A. The first room on the left.
Q. Where is your son's?
A. He is in the rear on the right.
Q. Beyond your room?
A. Yes, sir.
Q. Are there any connecting doors between your room and his?
A. Yes, sir.
Q. It is behind yours and opens into the hall?
A. Yes, sir.
Q. The entrance way is from the hall into his room?
A. From the hall and also from my room.
Q. Did anybody else stay at that house that night besides those people you have named?
A. No, sir.
Q. Did you talk to anybody at your house from the time you went to bed at 5.30 until you got up at 5 o'clock the next morning?

A. No, sir; I did not.
899 Q. Have you talked over this matter in your family since this accusation was made against you, about where you were that night?
A. No, sir.
Q. You have never talked it over?
A. No, sir.

Q. Is it not a fact that you have discussed it in your family, as to where you were that night, since this accusation was made? It has been a matter of considerable interest in your family as to where you were, has it not?

A. No, sir. They knew positively where I was.

Q. They all knew where you were?

A. Yes, sir.

Q. You say it has not been a matter of interest in your family where you were?

A. No, sir.

Q. And you have not discussed it at all?

A. No, sir.

Q. From that time until this?

A. No, sir.

Q. Do you remember what time you ate breakfast the next morning?

A. Why, I suppose it was about 6 o'clock or a little after—half past.

Q. That is your regular breakfast hour?

A. No, sir. When I am at work I eat breakfast about half past five—between five and half past.

Q. Do you remember what time you ate breakfast the next morning?

A. Not exactly; no, sir.

900 Q. Who ate breakfast with you?

A. The next morning?

Q. Yes.

A. My daughter and wife.

Q. Had your son-in-law and son gone out when you ate breakfast?

A. Yes, sir.

Q. Do you belong to a union?

A. Yes, sir.

Q. Do you belong to any other lodge or any other order?

A. No, sir.

Q. Any other society at all?

A. No, sir.

Re-direct examination by Mr. SHEPHERD:

Q. I will ask you, Mr. Mays, if you saw Stonecipher on the afternoon of the day that Johnson was lynched?

A. I did not.

Q. Did you see Stonecipher at all?

A. I never saw him at all.

Q. I will ask you if there was any conversation between him and Padgett, in your hearing, about the United States Supreme Court having interfered with the Johnson case?

A. No, sir.

Q. Nothing was said about that?

A. No, sir.

901 Q. I will ask you to state whether or not you said "we will look after that ourselves" or "we will take care of that ourselves," or anything to that effect?

A. No, sir.

Q. Are you a one-eyed man?

A. Yes, sir; you might consider it one eye.

Q. You cannot see well at night?

A. No, sir; I couldn't shut this eye and see you at all.

Recross-examination by Mr. SANFORD:

Q. Your other eye is all right, is it not, Mr. Mays?

A. Yes, sir.

Mrs. W. J. MAYS, a witness produced on behalf of the defendant, William J. Mays, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Are you the wife of the defendant, William Mays?

A. Yes, sir.

Mr. SANFORD. May it please the commissioner, I desire to object to the testimony of this witness on the ground that, she being the wife of the defendant, her testimony is not competent.

The COMMISSIONER. Note the objection.

902 By Mr. SHEPHERD:

Q. Do you remember the time that Ed Johnson, the negro, was lynched here from the county bridge?

A. Yes, sir; I remember it.

Q. I will ask you to state when your husband came home that afternoon.

A. He came home between five and six o'clock.

Q. If there was anything peculiar about his condition when he came home, state what that was.

A. His face was skinned a little.

Q. You did not see that done? You do not know how it was done?

A. No, sir; I did not.

Q. When he left home that morning, state whether he had this skinned place on his nose.

A. No, not that morning, he didn't.

Q. When was the first time you saw it?

A. When he came home that night.

Q. After he came home what did he do?

A. He went to bed. Soon after he came in he went to bed, and remained all night.

Q. Did he stay at home or not?

A. Yes, sir.

Q. When was the first time you heard that Johnson had been lynched?

A. The next morning about 7. I don't know the exact time, but I suppose it was about 7 o'clock.

Q. State whether or not your husband had been drinking that evening before he got home.

903 A. Why, I think he had been, some.

Cross-examination by Mr. SANFORD:

Q. Mrs. Mays, how do you remember particularly about this special evening, and the time that your husband came home?

A. Well, I remember very well the time.

Q. What makes you remember it? That was over a year ago. What makes you remember that particular evening?

A. Well, I don't know why I do, but he always comes home early in the evening.

Q. Is it not really from your knowledge that he always does come home that you suppose he came home that night?

A. No; I don't suppose anything about it. I know that he was at home.

Q. How do you happen to remember that, Mrs. Mays? What fixes it in your mind?

A. Well, because I just know that he was there; that is all.

Q. You just simply know that he was there on that particular evening?

A. Yes, sir.

Q. And you know what time he went to bed?

A. No, sir; I don't know. I can't tell you exactly, but he went to bed early. I don't know the exact hour or time, but in a short while after he came in he went to bed.

Q. Did you call in any doctor for that wound, or not?

904 A. No, sir; it was not bad enough.

Q. Did you get any medicine for it?

A. No, sir; I didn't do anything for it.

Q. It was just a scratch, was it?

A. Just a little scratch.

Q. How did it happen to fix itself on your memory; do you know?

A. When; at the time?

Q. Well, now, at this late date. How does it happen that you remember that little scratch?

A. Well, I remember very well the time, and I remember his face being hurt.

Q. But it was so slight that you did nothing for it, and did not get a doctor or any medicine for it?

A. Yes; it wasn't bad enough for a physician.

Q. When did you first hear about the Ed Johnson lynching? Was it before or after breakfast the next morning?

A. It was about 7 o'clock; about our breakfast hour.

Q. Was it from the morning paper?

A. No, sir; from Mr. Lieb. He telephoned to the house.

Q. Do you take the morning paper?

A. No, sir; we wasn't taking the paper.
Q. You were not taking the paper at that time?
A. No, sir.
Q. Was it before you had breakfast or after?
A. Yes, sir; before we had breakfast; about the breakfast hour, I think.
Q. What was your breakfast hour?
905 A. Between 6 and 7.
Q. Who ate breakfast together that morning, the morning after the lynching?
A. Me and Mrs. Lieb and my son and husband.
Q. You do not remember, do you, that they all were there? Do you remember how that was?
A. Yes; I think—we were all there.
Q. How do you know that?
A. Because I know we were. All of us were there at that time.
Q. That next morning you all took breakfast there. You are positive about that?
A. Well, I think so. I think we all had breakfast the same time.
Q. You have a recollection of that, have you?
A. We always do, and I think we did that morning.
Q. You remember that the same as you did about when your husband came home the night before; the same way?
A. Yes; I remember it.
Q. Just as distinctly?
A. Yes, sir; just as distinctly.
Q. Which of the family ate supper together the night before, Mrs. Mays?
A. Me and Mrs. Lieb and my son, and I don't remember whether Mr. Mays ate any supper that night or not. I don't think he ate any supper.
Q. You do not think he ate any supper?
A. No.
Q. Did he come home before supper?
906 A. Yes, sir; he came home before supper.
Q. What time did your son come home the night of the lynching, Monday night?
A. He quit work at 6, and came home right from his work.
Q. How far is he from his work? When did he get home?
A. At his usual hour.
Q. I do not know what his usual hour was, you see.
A. Between 5 and 6.
Q. You say he quit work at 6; he could not have gotten home between 5 and 6.
A. No, he quit work at 5, and came home between 5 and 6.
Q. Did he come home that Monday evening before or after your husband?
A. He came home about half past 6. I don't remember; I can't remember that. I don't remember which came home first, but we

all ate supper together; at least me and my daughter and my son ate supper together. Mr. Mays, I don't think ate any supper.

Q. Where was your son-in-law?

A. He was at his work.

Q. When did he get home?

A. Why, he didn't come home no regular hours. He hasn't any regular hours.

Q. Do you remember when he came home that night?

A. No, sir; I don't remember.

Q. You do not remember when he came home that night?

907 A. No, sir.

Q. What time does he usually come in?

A. Well, it is according to what his business is. His business sometimes calls him off late.

Q. What was he doing at that time; do you remember?

A. He was running a store on 8th street; a baker shop.

Q. How far was that from your home?

A. It is about four blocks.

Q. What time did he usually come home to supper when he was running that store?

A. Why, he came home—well, he didn't have any regular hours. Sometimes his business kept him down there later than at other times.

Q. And you do not remember, as I understand you, what time he came home on that Monday night?

A. No, I don't remember. But then he wasn't very late. Before we went to bed Mr. Lieb came in.

Q. But the exact hour you cannot remember?

A. No, sir.

Redirect examination by Mr. SHEPHERD:

Q. Where does your daughter live now, Mrs. Mays?

A. She is up the Ridge.

Q. How far is that from the city?

A. Why, I really don't know. I can't tell you how far it is.

Q. Is she able to get to court?

908 A. No, sir; she can't attend court. It is impossible for her to be here.

Recross-examination by Mr. SANFORD:

Q. Mrs. Mays, have you all ever talked this matter over in your family, as to where your husband was that evening?

A. I didn't understand you.

Q. Have you all talked over this matter in your family, as to where your husband was that evening, since this suit came up?

A. No, sir; we have always known that he was to home.

Q. You never have talked it over?

A. We never have. We didn't have to, because we knew.

Q. He has never asked you if you remembered where he was that night?

A. No, sir; because he knew he was at home.

Q. You have never talked it over with your daughter, or her husband or your son?

A. No, sir.

Q. You have had no family discussions about it whatever?

A. No, sir.

909 Mr. SHEPHERD. I shall endeavor to make an arrangement with the Attorney-General to get the testimony of Mrs. Lieb if I can, and with that statement I will close the case for Mr. Mays. Now we will take up, if the commissioner pleases, the case of Nick Nolan.

Testimony on behalf of the defendant Nick Nolan.

JOHN L. CHIVINGTON, a witness produced on behalf of the defendant Nick Nolan, having been duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. What is your full name, Mr. Chivington?

A. John L. Chivington.

Q. Are you the same Mr. Chivington who was examined heretofore at the instance of the Government in this case?

A. Yes, sir.

Q. I will ask you to state if at the time of the lynching of Ed. Johnson you were acquainted with the defendant Nick Nolan?

A. Yes, sir; I had known Nick Nolan, I presume, for about a year before the lynching. Especially I had known him when I saw him. I don't know how long I had been personally acquainted with him. I met him in his place of business.

910 Q. State whether or not you knew him well.

A. Yes, sir; I knew him very well.

Q. I will ask you where you were standing, at the time of this lynching on the bridge, when somebody hit Mr. Robert E. Pritchard?

A. I was standing two or three feet away from where it occurred.

Q. I will ask you to state whether or not you saw the man that hit Mr. Pritchard?

A. Yes, sir.

Q. Was that man the defendant Nick Nolan or not?

A. No, sir; it was not Nick Nolan.

Q. How do you know he was not Nick Nolan?

A. The man that hit Mr. Pritchard was a man I didn't know.

Q. State what is the size and appearance of Mr. Nick Nolan.

A. He is a man of rather slender build and about medium height.

Q. State whether or not the man that hit Mr. Pritchard was a large man or a small man.

A. He was a little bit heavier man than Mr. Nolan. He was a man that I didn't know at all.

Q. I will ask you to state whether you saw the man's face, and his shape and size?

A. Yes, sir; I saw him in the face.
Q. And you know it was not Nick Nolan?
A. It was not Nick Nolan.

Q. I will ask you to state if you saw the bunch of men
911 who were engaged in lynching Johnson, in the effort to hang him and in shooting him?

A. Yes, sir.
Q. How many men were in that party?
A. Well, I would say there were—I don't remember. I did, at one time, know what I believed to be an accurate number of the lynchers.
Q. About how many were there?
A. I think about a dozen.
Q. State whether or not the defendant, Nick Nolan, was in that bunch.
A. I didn't see Nick Nolan that night.
Q. You did not see him that night?
A. No, sir.
Q. I will ask you to state if Nick Nolan is not a man of rather striking appearance and one that you would easily recognize?
A. Yes, sir; I think, after the thing was all over, that I would have been positive if I had seen Mr. Nolan in the crowd.

Cross-examination by Mr. SANFORD:

Q. Nick Nolan was there that night, was he not?
A. Not to my knowledge.
Q. To the best of your recollection he was?
A. No, sir; not to my recollection.
Q. Did you not have his name on the list that you wrote, in the first description of that lynching?

912 A. I don't think so, Mr. Sanford.

Q. Take your best recollection. You did have a list?
A. There was a time when I had a list of all the people I saw that night that I knew or could find out who they were.
Q. Did you not have Nick Nolan's name on that list?
A. Not to my best recollection; no, sir.
Q. Will you say that you did not have it?
A. I know I didn't see Nick Nolan.
Q. I did not ask you that, Mr. Chivington. I ask you if you did not have Nick Nolan's name on that list.
A. No, sir; I have no recollection of having his name on that list.
Q. Do you say you did not have it on that list?
A. I won't say whose names I had on the list. I will tell you how I got the list.
Q. I did not ask you that, Mr. Chivington. I just asked you that one simple question if you did not have Nick Nolan's name on the list.
A. I don't think I did.
Q. Do you say you did not?

A. Well, I wouldn't say whose names I had and whose I hadn't. I don't remember of having Mr. Nolan's name on that list.

Q. You will not say you did and you will not say you did not; you just say that you do not remember it now?

A. I think I would have remembered it if I had had it.

Q. You think you would have remembered it?

A. Yes, sir.

Q. How many names do you remember that were on that
913 list?

A. I don't remember but one for sure.

Q. Who was that?

A. That was a fellow by the name of Johnnie Jones.

Q. You had a Johnnie Jones on your list?

A. Yes, sir. It was a man that I didn't know. Somebody told me that there was a Johnnie Jones in the crowd.

Q. How many names did you have on your list?

A. I think I had about 30 or 35 names.

Q. That included the lynchers and the bystanders?

A. Everybody.

Q. And the only name that you can remember now is Johnnie Jones?

A. That is the only name I remember.

Q. Then your memory about that list is not very accurate?

A. No, sir; it is not.

Q. And you do not know whether Nick Nolan's name was on it or not?

A. No, sir.

Q. How good a view did you get of this man that hit Mr. Pritchard?

A. About as good as I have of you now, Mr. Sanford.

Q. How long did you look at him? About as long as you have been looking at me just now?

A. Well, I don't know about that; but I saw him hit Mr. Pritchard.

Q. It was under the light there?

A. Yes, sir.

914 Q. Do you know now who it was?

A. No, sir; I don't know.

Q. You had time to take observations as to his height and his general appearance?

A. Yes, sir; I noticed about his size.

Q. Did you hear anybody speak up and say who that was—that so-and-so hit Mr. Pritchard? Did you hear Mr. Pritchard say who hit him?

A. No, sir. Mr. Pritchard didn't say a word at that time.

Q. Did you hear anybody else speak up and say who that was; I mean at that time, in the crowd? Is it not a fact that it was stated at that time that it was Nick Nolan?

A. Not in my hearing. I have heard since a dozen different names.

Q. Was it not said right there, while that thing was going on, that it was Nick Nolan that hit Mr. Pritchard?

A. No, sir; I never heard anybody say it was Nick Nolan until the Associated Press in Washington named these——

Q. Who did you hear them say it was that hit him?

A. Why, I don't know who it was.

Q. Who did they say it was that night?

A. There was nobody mentioned in my presence or hearing that night as the man who was supposed to have hit Mr. Pritchard.

Q. Nobody said who hit Bob Pritchard?

A. Not that I know of.

Q. Not that you recollect?

A. Not that I heard.

915 Q. Your recollection is not very clear about those events, then, is it; especially about names? You do not remember the names?

A. Well, I didn't make any attempt to.

Q. You put them down on paper, but you have forgotten them?

A. Yes, sir.

Q. You had them all on paper and now you do not remember them. Did you hear it stated there that night who it was that fired those shots into Johnson's body after he fell down?

A. No, sir; I didn't hear that said that night either.

Q. What names did you hear mentioned there that night as taking part in the lynching—I mean among the bystanders?

A. I can't tell that either, Mr. Sanford. I don't remember the names of the folks that were supposed to be in that lynching. There are only two of the present defendants that I knew then at all.

Q. Only two of the present defendants that you knew?

A. Personally; that is, that are accused of being lynchers.

Q. You did not see everybody personally that was in that lynching, to recognize them, did you? You did not see them all in light places where you could recognize them?

A. There were people there that I never did see after they lost their masks.

Q. And even they might have been your best friends, or men that you knew well and had seen frequently, and yet you would not have recognized them, because you did not see them without their masks?

916 A. That is possible; yes, sir.

Q. And the fact that you did not recognize the men does not prove that they were not there?

Mr. SHEPHERD. That is a law question you are asking him.

By Mr. SANFORD:

Q. There were a good many men who took part in that lynching that you did not see after they got their masks off; that is true, is it not?

A. Yes, sir; that is true. That is the reason I said that I didn't see Mr. Nick Nolan.

Q. He may have been one of those masked men, so far as you know?
A. So far as I know.
Q. You simply do not know whether he was or not?
A. I didn't see him there that night.
Q. Can you find that list of yours?
A. No, sir; it is not in existence.
Q. Did you see Squire Ware there that night?
A. Yes, sir.
Q. Was he there on the bridge?
A. Yes, sir.
Q. Where was Squire Ware?
A. Squire Ware was on the opposite side of the crowd that had the nigger, from where I was.
Q. He was right up there in the crowd, was he not?
A. I was on the west side of the crowd and he was on the east side.
Q. He was right close up?
917 A. Yes, sir; he was right among them.
Q. He was right on hand there?
A. Yes, sir.
Q. There is no doubt about that, is there?
A. No doubt about his being there.

Redirect examination, by Mr. SHEPHERD:

Q. State whether or not your recollection is clear that you saw the man distinctly who hit Mr. Pritchard.
A. Yes, sir; I saw him very distinctly.
Q. And whether or not your recollection is clear that that man was not Mr. Nolan?
A. It was not Mr. Nolan.

JAMES P. PEMBERTON, a witness produced on behalf of the defendant, Nick Nolan, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. I will ask you to state, Mr. Pemberton, if you are a deputy circuit court clerk of this county.
A. Yes, sir.
Q. Did you hold that same position at the time of the lynching of Ed Johnson?
A. Yes, sir.
918 Q. I will ask you to state if you have charge of any special department of the circuit court clerk's office.
A. At that time I had charge of the criminal court.
Q. I will ask you to state if you were on the court-house grounds when Johnson was taken out of the jail that night.
A. Yes, sir.
Q. Did you see the crowd of men that brought him out of the jail?
A. Yes, sir.

Q. I will ask you to state if you saw this crowd of men until they passed the corner of Walnut and 6th streets on the way to the bridge with the prisoner.

A. They were out of my sight for probably a couple of minutes until I walked around the side of the building, and then they came into view again.

Q. Mr. Pemberton, I will ask you to state whether or not you went down out of the court-house lot by way of the steps at the corner of 6th and Walnut streets.

A. The northwest corner.

Q. The northwest corner.

A. Yes, sir.

Q. At the time that you went down those steps where were the lynchers and Johnson?

A. They were about 50 or 60 feet north of the intersection of 6th and Walnut street and about the center of Walnut street.

Q. About the center of Walnut street?

A. Yes, sir.

919 Q. I will ask you to state if you are well acquainted with the ex-constable, Joe Franklin, the colored constable who was a witness in this case?

A. I have known him a number of years.

Q. State whether or not he was on those steps or about there anywhere that night.

A. He was not there at all.

Q. He was not there at all?

A. No, sir.

Q. Did you see him anywhere about the wall of the court-house or between the place where you were and the jail?

A. No, sir.

Q. And he was not on those steps?

A. There was no one there at all.

Q. Did you go on out to the bridge where the lynching occurred?

A. Yes, sir.

Q. I will ask you to state where you were when some one hit Mr. Robert Pritchard.

A. Well, I didn't know until the next day that Pritchard was the man that was struck.

Q. Where were you when the blow was struck?

A. I was 15 or 20 feet, not more than 20 feet, from Johnson when the blow was struck.

Q. I will ask you to state whether or not you were acquainted with the defendant, Nick Nolan?

A. I have known him for a number of years, Judge, but I don't think I ever spoke to him but once in my life. I know who he is, though. I know him—well, I might say quite well—from seeing him in town.

920 Q. I will ask you to state whether or not that man who struck Mr. Pritchard the blow was or was not Mr. Nick Nolan.

A. The man that struck the blow had his back towards me, but he was a big, wide-shouldered fellow. He was a man that appeared to me to be as large as you are or Mr. Pope Shepherd.

Q. Give us your best impression and judgment, from the size and appearance of Nick Nolan, this defendant, as to whether or not he was the man that hit Mr. Pritchard.

A. I don't think he was Mr. Nolan. The man that struck Pritchard was a big man—that is, a wide-shouldered man. He had on a black coat.

Q. How is Nolan in that respect?

A. Why, he is a little bit of a narrow-chested, long-nosed, weak sort of a fellow.

Cross-examination by Mr. SANFORD:

Q. How close did you get to the lynchers as they came out of the jail?

A. I got behind them about, I guess, 50 or 60 feet after they passed the intersection of 6th and Walnut streets, the northwest corner.

Q. Did you see them as they came out of the jail?

A. I saw them as they came out of the jail door, and then when I came to the east side of the court-house they were out of my sight. Then I got in view of them as I passed the north end of the building.

Q. How long had you been up there?

921 A. Up where?

Q. In the court-house yard?

A. Just long enough to walk across the street from Walnut street.

Q. Where had you been before that time?

A. I had been at home.

Q. And you got there, then, about 10 o'clock?

A. Yes, sir; that is my recollection.

Q. Just a few minutes before they came out of the jail?

A. I got there five or ten minutes, may be, before they got out of the jail.

Q. Did you know that there was a lynching going on inside?

A. Not until I had got there.

Q. Did you go into the jail?

A. Yes, sir.

Q. Did you go in before they came out?

A. Yes, sir.

Q. How long before they came out did you go in?

A. I was in there two or three minutes, I expect.

Q. And you knew there was a lynching going on then?

A. No, I didn't know it. I didn't go upstairs.

Q. You heard the racket?

A. Yes, sir.

Q. There was a crowd standing around there, was there not?

A. No, sir.

Q. Was there anybody there at all?

A. There was one man in the corridor, but there wasn't any-
922 body in the street that I saw. Just a few men were in the jail and they were up on the staircase and up around the circle.

Q. There was nobody standing around the jail at all?

A. If there were I didn't see them.

Q. You did not see a crowd of men on the opposite side of the street, up against the stone wall?

A. No, sir.

Q. You did not see anybody on the street at all?

A. Not then; no.

Q. When you went over and went in the jail?

A. Well, I would hardly notice anybody on the east side of the street, because that was in the shadow.

Q. What was it that got you into the jail?

A. I went in there by instructions.

Q. By instructions?

A. Yes, sir.

Q. Whose instructions?

A. The court.

Q. That was about ten minutes before they came out?

A. About that; yes.

Q. And you did not see any crowd at all?

A. Not on the outside, and mighty few on the inside.

Q. How did you happen to get up there where the court could instruct you?

A. I was telephoned for. It was this way, Mr. Sanford——

Q. I do not ask for the particulars. Were you telephoned for? That will be sufficient.

A. Yes, sir.

923 Q. That is the way you happened to go up town and be around there?

A. Yes, sir.

Q. Were you there in the court-house, in the corridor, or in the front room, when the lynchers came out?

A. Yes, sir.

Q. Did they pass you in the light?

A. They were across the street.

Q. I thought you were in the corridor when they came down.

A. Oh, well, I was up in a window of the second story overlooking Walnut street, looking west. The lynchers came out of the south door of the jail, going east. I left my position and came down through the building and walked on the east side of the building. That is when they passed out of sight.

Q. You mean you were in the second story of the jail when they came down?

A. No; the second story of the court-house.

Q. Of course, you could not see from the court-house to recognize anybody?

A. No, sir.

Q. Had you been over to the jail before they came down?
A. Yes, sir.
Q. You had been over and come back, had you?
A. Yes, sir.
Q. And you were in the second story of the court-house when they came down?
A. Yes, sir.
924 Q. Did you recognize anybody as they came down?
A. No, sir; I was too far away.
Q. When you went over there the first time did you recognize anybody?
A. Only one man. That was a constable in the corridor.
Q. What was his name?
A. Allen; Bill Allen.
Q. He was the only man you recognized?
A. Yes, sir.
Q. Then you came back and were in the second story of the court-house when they came out?
A. Yes, sir.
Q. How long did you stay in the second story of the court-house after they came out before you followed after them?
A. Not over two minutes, if that long.
Q. You saw them from the second story of the court-house. You could see that the crowd had come out of the jail and was starting up Walnut street?
A. Yes, sir; they were coming out.
Q. Then, after you saw them come down and start up Walnut street, you waited about a couple of minutes and then you came down the steps and started after them?
A. No; my time was occupied in getting out of the building. I just turned around and walked out.
Q. You turned just as soon as you saw them come down?
A. Yes, sir.
Q. Where did you have to go when you came down?
925 A. Through the big court room and down two flights of stairs, through the south entrance, then east and then west to get around the building.
Q. That was some four or five hundred feet altogether that you had to go to get to the corner there by Walnut street?
A. Three or four hundred feet; yes.
Q. And the lynchers then were not over a hundred feet, were they, from the corner of Walnut and 6th streets?
A. They weren't hardly that far; 50 or 60 feet north of that intersection.
Q. After you saw them come down, you had to walk some four or five hundred feet?
A. I didn't walk; I ran.
Q. You ran all the way?
A. Except when I stopped to open the door.

Q. You were on a dead run, were you?
A. I wanted to see what was doing.
Q. Were you going down there to stop them?
A. No; I hadn't any business to stop them.
Q. That was not your purpose?
A. Not a bit.
Q. You were on a dead run, though?
A. I was walking around there pretty lively. I ran downstairs and walked down the edge of the court-house.
Q. You were considerably excited, were you not?
A. I can't say I was.
Q. You were pretty curious?
A. Yes; I wanted to see what was doing.

926 Q. So much so that you ran down through the court-house and down the steps?
A. Yes, sir.

Q. You are not in the habit of going through the court-house running, are you? That is not your usual method, is it?
A. It is not my usual method, but I have been through it many a time that way.
Q. You have been pretty excited when you have done it, have you not?
A. No.
Q. You have been in the habit of running through a building when it was dark?
A. The electric lights were on.
Q. Is it a habit of yours to run through buildings when you are not excited?
A. No, that is not a habit; not even a custom.
Q. As a matter of fact, thinking about it now, would you not think you were considerably excited to do that?
A. No; I wanted to see what was going on. I didn't know whether they were going to hang him up in front of the court-house or not.
Q. The thing you were after was to get up to those lynchers and see them?
A. Yes.
Q. As a matter of fact you kept on going pretty fast after you got out of the building?
A. I did until I got down the steps. I don't see very well, and the light was in my eyes, and I had to stop.

927 Q. The thing you were after was to get down the steps safely and not break your neck?
A. Yes, sir.

Q. And, as a matter of fact, it would be quite easy for a man or two to be standing there without your noticing them?
A. Not in that place.
Q. You were thinking about catching up with those lynchers, who you say were 50 or 60 feet ahead of you?
A. Yes.

Q. You are near-sighted, or have defective eyesight?
A. Yes, sir.
Q. And you wanted to get down those steps. You had your eyes right on the steps?
A. I certainly did, and the light was shining.
Q. To see that you got down safely?
A. Yes.
Q. And you were not looking to the right nor left, I understand, to see who was there?
A. Certainly not; but there was no one there.
Q. I am asking you if you were not trying to get down those steps safely, and were not concerning yourself with who was standing there?
A. Yes, sir.
Q. That is true?
A. Yes, sir.
Q. And they might have been more than 60 feet ahead of you; they might have been a block ahead of you?
A. Why, no.
928 Q. You are certain they were not a block ahead of you?
A. No; they were 50 or 60 feet north of the intersection, as I told you.
Q. That is your recollection, but are you certain that was the exact distance?
A. Why, nothing except the measurements of the lots along there. I know that distance in there.
Q. As a matter of fact there was a light between you and them, was there not? They had passed the light?
A. Yes, sir.
Q. It is pretty hard to see just across on the other side of a bright light, is it not?
A. Well, I was under the light, you know, to a certain extent.
Q. But it is hard to see on the other side of a light. When you are on one side of a light and somebody is on the other, it is hard to see him, is it not; and you have defective eyesight?
A. I didn't find any trouble in seeing them.
Q. You did not have any trouble in seeing the crowd on the other side, and seeing how far they were from you?
A. No, sir.
Q. You were over there inside some ten minutes, as I understand you, before they came down. You had had time to go back to the court-house and go upstairs before they came down?
A. I didn't say that.
929 Q. I misunderstood you. About how long was it? I do not want to misunderstand you.
A. Ask the question again, please.
Q. I want to know how long it was before they came down with Johnson from the jail that you had been over there.
A. Oh, just a couple of minutes; two or three minutes.

Q. How long did you stay over there?
A. Over where?
Q. Over in the jail.
A. A minute or two; hardly that long.
Q. And you did not find anybody there except this one man?
A. I saw the crowd upstairs.
Q. Then you went back to the court-house?
A. Yes, sir.
Q. What effort did you make to stop that lynching?
A. I tried to get to the sheriff or get to the telephone to notify the authorities to give the sheriff protection; but there was no telephone there.
Q. There was no telephone in the court-house?
A. Plenty of them, but I couldn't get connection with the police authorities.
Q. Did you make any effort yourself?
A. No.
Q. How far was it to police headquarters?
A. A couple of blocks; two blocks and a half.
Q. You knew Will Allen?
A. Yes, sir.
Q. He was a constable?
A. Yes, sir.
930 Q. He was not tied there? Nobody had him in guard?
A. No, sir.
Q. He was not handcuffed?
A. No.
Q. You went over there to get police protection for the sheriff?
A. No; I went over to see if there was any assistance needed.
Q. Did you get close enough to him to find out if he needed any assistance?
A. I never did see him.
Q. You knew there were men inside and you knew he was inside?
A. No; I didn't know he was inside. I knew there was a bunch of men inside.
Q. Did you send Mr. Allen down to police headquarters to tell them to come up and catch that gang of lynchers?
A. No, sir.
Q. Did you go down yourself to do it?
A. No, sir; I went back to the court-house.
Q. You did not make any effort yourself to do it?
A. No, sir; I went back to the court-house.
Q. You did not make any effort to go down two blocks to police headquarters and tell the police, so that they could corral that gang of lynchers?
A. No.
Q. And you did not ask Will Allen to do it?
A. No.
Q. You did not ask anybody else to do it?

931 A. No.

Q. And they were all there inside—upstairs—and the police headquarters was two blocks away?

A. And a little over that.

Q. And you are deputy clerk of the court?

A. Yes.

Q. Of the criminal branch?

A. Yes, sir.

Redirect examination by Mr. SHEPHERD:

Q. Mr. Pemberton, how wide is the breach in the wall at the northwest corner of the court-house lot where those steps go up?

A. I should say 6 or 7 feet wide, and it branches out.

Mr. SANFORD. There is just one matter I forgot, Judge.

Recross examination by Mr. SANFORD:

Q. Who was that man that struck Mr. Pritchard?

A. I don't know; his back was towards me.

Q. You judge entirely by his size and height?

A. Yes, sir.

Q. How close did you get to those fellows when the lynching was going on?

A. 15 or 20 feet.

Q. How long did you stand there?

A. Until the performance was over.

932 Q. How long did it take?

A. Oh, just a few minutes.

Q. Whom did you recognize out there?

A. Not a soul that I knew.

Q. You did not see any of your friends?

A. No.

Q. Any of your acquaintances?

A. No.

Q. You did not see Mr. Pritchard?

A. I saw a man, but didn't know who it was.

Q. You have known Mr. Pritchard for years, have you not?

A. Yes, sir.

Q. He is one of your best friends?

A. He is a good friend of mine.

Q. He was knocked right down there and you did not recognize him?

A. Well, he was on the other side of the crowd.

Q. You have known Mr. Chivington for years, have you not?

A. Yes, sir.

Q. And you did not see him there that night?

A. No, sir.

Q. You know Mr. Curtis, a reporter on the Times; you have known him for years?

A. Yes, sir.

Q. And you did not see him there?

A. No, sir.

Q. You have known Squire Ware for years, have you not?

933 A. Yes, sir.

Q. And you did not see him?

A. No, sir.

Q. In fact, you were not very close, were you?

A. Well, I was within 15 or 20 feet.

Q. Your eyes are pretty bad off, are they not?

A. They are not so bad as that. They are a little weak.

Q. You did not recognize your good friends?

A. No, sir.

Q. But you were there yourself?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir; I am sure of that.

Q. You did not recognize anybody at all?

A. No, sir.

JOHN D. VOGT, a witness produced on behalf of the defendant Nick Nolan, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. What is your name, sir?

A. My name is John D. Vogt.

Q. What business are you engaged in?

A. I am a bartender.

Q. Where were you on the night that Ed Johnson was

934 lynched in this city in March of last year?

A. I was working for Nick Nolan.

Q. Where and for whom are you working now?

A. I am working for Luther Williams, 630 Market street.

Q. Do you remember where Nick Nolan was the night that that lynching occurred?

A. I believe he was in the saloon.

Q. Do you know anything about it? I am asking you if you know where he was.

A. Yes, sir. He usually gets over there every night, or did when I was working for him.

Q. We are not inquiring about what he usually did, but what he did on that particular night. What time did he come to the saloon?

A. Well, I went to work at 6 o'clock and he goes home to supper, and I expect it was about 7 o'clock, perhaps a little after.

Q. How long did he remain at the saloon?

A. I think he stayed there until about half past 8 o'clock.

Q. Then where did he go?

A. I don't know; I couldn't tell you.

Q. Did you see him go out of the saloon?

A. Yes, sir.

Q. How do you know that that *that* was the night that Ed Johnson was lynched?

A. Well, he usually done that every night. He would some-
935 times stay until half past 9 and 10 o'clock, until we closed up.

Q. And that is all that you have now to fix it on your mind that that was where Nick Nolan was that night?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. The fact is you just remember that he usually did that, but you do not remember whether he did on this particular night or not; you simply think he did because he usually did?

A. He had done it almost every night.

Q. That is all you remember about it, is it?

A. Yes, sir.

JOHN NOLAN, a witness produced on behalf of the defendant Nick Nolan, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Mr. Nolan, are you a brother of the defendant Nick Nolan?

A. Yes, sir.

Q. Do you know where he was on the night Ed. Johnson was lynched?

A. Yes, sir.

Q. Where was he?

936 A. He was in my place from about 9.30 until about 10.15.

Q. Where is your place with reference to his?

A. Well, my place now is at 1004 Whiteside, but at that time it was 300 Whiteside, just one block from his place.

Q. What time of night was it when he came to your place?

A. He came to my place, as near as I can come to it, along about 9.30. It may have been a few minutes after that.

Q. State whether or not that was the same night that Ed. Johnson was lynched.

A. Yes, sir.

Q. How do you know it?

A. The reason I know it is picking up the paper next morning after getting up, when my wife was cooking breakfast. The first thing I done was pick up the paper, and I seen where he was lynched the night before, and I was surprised to think that anything like that happened. The night being so quiet and everything that I never once realized that anything like that was going to happen.

Q. State whether or not, when you saw it in the paper, you recollected in your mind where you were the night before and where your brother was.

Mr. SANFORD. I object to that. I think that is incompetent.

Mr. SHEPHERD. I withdraw it. Cross-examine.

937 Cross-examination by Mr. SANFORD:

Q. Have you anything else to fix it in your mind besides the fact that you read in the paper the next morning that there had been a lynching?

A. Well, no, sir; I don't know as I have.

Q. This defendant is your brother, is he?

A. Yes, sir.

Q. Is it an unusual thing for him to come to your place and talk things over with you? You are good friends, are you not?

A. Yes, sir; we ought to be. We are brothers.

Q. It was not an uncommon thing for you to meet there and talk over business matters together, was it?

A. We have talked over business matters before, but this night in particular we had a special occasion to talk over the matter.

Q. Just as you frequently did? You were always talking over things together, were you not? You are on brotherly terms?

A. Yes, sir; we are on brotherly terms.

Q. You were engaged in the same business, right close alongside of each other, were you not?

A. Yes, sir.

Q. What was your business?

A. The whiskey business.

Q. What do you mean by that; wholesale?

A. Retail.

Q. You had a saloon?

938 A. I had a saloon.

Q. Were you the bartender yourself?

A. No, sir; I was the proprietor.

Q. Was your brother the proprietor of a saloon?

A. Yes, sir.

Q. You were both on Whiteside street?

A. Yes.

Q. Within about a block of each other?

A. Yes, sir.

Q. And you met each other every now and then and talked things over?

A. Yes, sir.

Q. You would go over to his place in the evening and talk to him, and he would come over to your place and talk to you; is that a fact?

A. Yes, sir; certainly. We would talk as a general thing wherever we met.

Q. Wherever you met you would generally have a conversation about all sorts of things, just as brothers naturally would; that is true, is it?

A. Yes, sir.

Q. Do you remember the last time, before this night that you have testified about, that you talked to him in a brotherly way about anything?

A. I only talked to him once before that regarding business, and that is when I first went in the business, or before I went in the business.

Q. Do you remember how many other times he was over at your place and talked to you about anything in the evening?

939 A. I suppose he has been there fifty or sixty different times.

Q. Take that month of March of last year; he was probably over there three or four times, was he not?

A. Well, I don't know.

Q. That would be your best recollection, that he was there three or four times during that month?

A. I wouldn't be surprised.

Q. Can you tell us any other night during that month that he was at your place and talked business?

A. No, sir; I don't hardly think I can.

Q. You could not give the date or the hour when he came or when he left?

A. Which; that night, do you mean?

Q. No; that month.

A. That month? No, sir.

Q. Any other time except this particular one.

A. No, sir; I can't tell you.

Q. Have you and he talked this thing over?

A. Which; about this lynching?

Q. Yes; and about where he was the night before, and where you were?

A. Yes, sir.

Q. When did you first talk with him about it?

A. The first time was when I seen it in the paper where he was supposed to be one of the lynchers. That was about three days after that, when I came back from Nashville.

940 Q. It was after this suit was brought by the Government, was it not?

A. Well, the suit hadn't been—yes, I believe the suit had been brought.

Q. It was in the latter part of May, was it not?

A. Yes, sir.

Q. And then you and he talked it over?

A. Yes, sir.

Q. And he asked you if you remembered where he was?

A. No, sir; I told him. I remarked on the train—I suppose there was 25 or 30 people there; some of them are in here now; they all read the paper at the same time, and I said: "If every man's name that was in the paper had as good a chance as this boy had to prove"——

Q. I am not asking you for your conversation. I object to the conversation as incompetent.

You mentioned it to him before he mentioned it to you?

A. Yes, sir; that is the first thing I done, and when I got back I went right straight to see him.

Q. How far is your saloon from the jail?

A. Which; my saloon at the present time?

Q. No; the one you were occupying then.

A. I suppose a mile and a quarter.

Q. Which way; east, west, north, or south?

A. South.

Q. It was opposite from the bridge, was it?

A. South from the bridge.

Q. Is there a street car line running by your place?

A. No, sir.

Q. How far were you from a street car line?

941 A. Two blocks; that is, at that time. There is a street-car line running by my place now.

Q. That is what I mean. You were two blocks from a street-car line then?

A. Yes, sir. There are two lines, one east and one west.

Q. Could you catch a street car two blocks from your place that ran to the jail?

A. No, sir.

Q. Or that ran to the bridge?

A. No, sir. It doesn't run to the bridge. It runs right down Market street.

Q. It transfers to a line that does run to the bridge, does it not?

A. Yes, sir.

Q. So that by going two blocks a man could have gotten on a street car that would have taken him, with one transfer, right to the bridge?

A. At that time I don't think they would have given transfers, to the best of my recollection. I think the car line on the other side of the river belonged to another company.

Q. He could have paid another nickel then; but there was a continuous line of street car track that ran from two blocks from your place to the bridge at that time?

A. Yes, sir. Just about once a day they would make connections with the street-car line across the river.

Q. It would have cost 10 cents to have gone, and a man could have gone to the bridge?

A. Yes, sir.

941½ Q. You do not really mean seriously that it was only once a day that a car ran across the bridge?

A. Many is the time I went down there on a car and had to stand over half an hour before I got a car.

Q. That is not all day.

A. I didn't say all day. I say about once a day they would make connections. You misunderstood me.

Q. I did misunderstand you. About once a day they would make connections?

A. Just about.

Q. Sometimes you would make a quick connection and sometimes it would take longer?

A. Yes, sir.

Q. Do you remember what the schedule was on the bridge line?

A. No, sir; I don't.

Q. Do you remember whether it was 15 minutes or half an hour?

A. No, sir; I don't remember.

Q. You might take one line and make connections and you might not?

A. Yes, sir.

Q. And when you came up town on that street-car line, how close could you go to the bridge without any change at all?

A. There was one line that we could take about three squares from where I was, and went as far as 4th street, and one that was within two blocks of me, and you got off at 9th street and had to walk to 8th.

942 Q. If you had taken the car that went to 4th street you would have been within three or four blocks of the bridge, would you not?

A. Let's see. After you had went up on the hill a couple of blocks, about three blocks before you got on High street, and then from 4th—I suppose it would have been about five or six blocks.

Q. So you could have taken that street car and it would have landed you within five or six blocks of the bridge?

A. Yes.

Q. How close to the jail would that have landed you?

A. About two blocks from the jail.

Q. On Market street?

A. Yes, sir.

Q. Market and Walnut are parallel and two blocks apart, is that it?

A. Yes, sir.

Q. And this street car ran down Market street?

A. Yes, sir.

Redirect examination by Mr. SHEPHERD:

Q. What time of night did you say Nick left your place?

A. Why, I left there with him. We both left about 10.15.

Q. How do you know it was that time?

943 A. For the reason that when closing time came there was another gentleman in there, and I remarked that he had to get out as the clock was striking. They both started together, and I told Nick to wait a minute; I wanted to see him about what I was telephoning about.

Mr. SANFORD. I object to that evidence as hearsay.

Mr. SHEPHERD. We withdraw it. I did not ask him for that.

Mr. SANFORD. I understand that.

By Mr. SHEPHERD:

Q. What do you mean by closing time?

A. Ten o'clock is supposed to be closing time.

Q. Under the city ordinance?

A. Yes, sir; under the city ordinance?

Q. You and he left your place together?

A. Yes, sir.

Q. Where did you go?

A. We went home, both of us. I left him at his gate and he walked up the steps, and I bid him good night and went on home.

Q. Was that the last you saw of him?

A. That was the last I saw of him.

Q. And that was about 10.15 when you left your place?

A. Yes, sir; I am satisfied that it was about 10.15 when we got out of my place.

Q. What business did you have to do in your store after it was closed, before you went away?

A. The only business I had to do was just simply to talk to him regarding forming a partnership. I was tired of the fellow I was with, had been tired of him for some time, and we dissolved about six or seven months after that.

944 Recross-examination by Mr. SANFORD:

Q. Where was your brother's house?

A. My brother's house was just a little over half a block from my place of business.

Q. Was it close to a street car line or not?

A. Yes, sir; it was middle ways.

Q. How many times did you and he ever walk home together a night?

A. Well, often when he closed, maybe we would meet.

Q. He would come by your place and walk home with you?

A. Yes, sir; that is, if he happened to catch me on the corner, or anything like that.

Q. You both closed about the same time?

A. Well, yes.

Q. Or did you run after 10 o'clock generally?

A. No, sir; I never did. I don't know what he done, but I know I didn't.

Q. And if he came by at closing time he would be pretty apt to catch you, would he not?

A. No, sir. As a general thing I left there before he could get down. I was always anxious to get home after closing hours.

Q. But he did frequently come by and walk home with you?

A. No; I can't say frequently. While I was in business there I don't suppose he caught me there after closing hours three different times.

945 Q. When were the other three times, to the best of your recollection?

A. There was some nights there when maybe he had been down to his place and maybe the other bartender was closing, and he would

came by on his way home, or something like that, if he knew it was about time.

Q. To the best of your recollection, there were three other times when he caught you and walked home with you. When were those three other times, to the best of your recollection?

A. It is way out of my recollection.

Q. I understood you to say to the best of your recollection there were three other times.

A. I said as far as I could refer back—that is, just taking my mind back.

Q. You do not remember any of those other times?

A. I couldn't say whether it was January, February, March, or when.

Q. You know there were three other times?

A. Yes, sir.

Q. But what nights they were or what months they were you can not tell.

A. No, sir.

Q. You can not recollect any other time when he walked home with you and you left him at his gate except this one time, the 19th of March, 1906? That is the only one you remember?

A. Well, I don't know whether this was on the 19th of March. It was along in March; I can't remember the date; but it was the day this fellow was lynched.

946 Q. You do not know whether it was Monday, Tuesday, or Wednesday?

A. I don't know whether it was Monday, Tuesday or Wednesday. The only thing is I remember picking up the paper, while my wife was cooking breakfast, and I read it and remarked to her that I was surprised——

Mr. SANFORD. Do not state what you said. I note an exception to what he remarked to his wife the next morning.

Mr. SHEPHERD. You are getting that out yourself.

Mr. SANFORD. I did not ask for his conversation.

By Mr. SANFORD:

Q. You do not remember any other time you walked home with him except this one time?

A. I don't see where there was anything before that that would ever attract my attention in that manner, that I should remember any such a date.

Q. The paper did not accuse your brother the next morning of being in that lynching, did it?

A. No, sir.

Q. It did not mention his name, did it?

A. No, sir; not that I know of.

Q. You did not know then that he was accused of being one of the lynchers, did you?

A. I didn't know it till I read it in the Nashville Banner.

947 J. C. WILLIAMSON, a witness produced on behalf of the defendant Nicholas Nolan, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Your name is J. C. Williamson?

A. Yes, sir.

Q. Where did you live at the time of the lynching of the negro Ed. Johnson, in Chattanooga, in March, 1906?

A. No. 5 Calloway street; East 20th it is now.

Q. Is that in this city?

A. Yes, sir; fifth ward.

Q. How do you remember or recall the night that Johnson was lynched?

A. Because of the excitement the next day, and seeing it in the paper, and all, naturally made me remember it.

Q. What excitement do you refer to?

A. The next day at the shop they were all talking about it, you know.

Q. Had the negro laborers all quit work that next day?

A. No, sir.

Q. Do you know where Nick Nolan was any part of the night on which the lynching occurred?

A. I know where he was from about 15 or 20 minutes to 10 o'clock up to 10 o'clock.

Q. Where was he then?

A. He was in Mr. John Nolan's place of business.

Q. How do you know that?

948 A. Because I was in there myself.

Q. What were you doing there?

A. I was electioneering at that time for Mr. Sam Bush, me and John Nolan was, and he and I were kind of managing Mr. Bush's campaign in the ward. I was out that evening, and passed by Mr.——

Q. When you say you were electioneering for Mr. Sam Bush, state what sort of election was on?

A. Nomination for sheriff; Democratic nomination.

Q. The Democratic primary?

A. The primary; yes, sir.

Q. It was a primary, instead of an election?

A. Yes, sir.

Q. Who were the opposing candidates before the Democratic primary?

A. Mr. Bush and Sheriff Shipp.

Q. You were a friend of Mr. Bush?

A. Yes, sir.

Q. How long did you stay in John Nolan's place?

A. I went in there about 9.30 and stayed until he closed up.

Q. What time did Nick Nolan come in?

A. About fifteen or twenty minutes, possibly, after I came in.
Q. When you left and went away, where was Nick?
A. Nick and I started out together, and John called him back and wanted to see him on business. Nick said, "Wait a minute"——
949 Mr. SANFORD. We desire to note an objection to the conversation, as hearsay.
Mr. SHEPHERD. I do not contend that it is competent at all.

By Mr. SHEPHERD:

Q. But you remember the fact that you went away and left Nick Nolan there in John Nolan's saloon?
A. Yes, sir.
Q. When did you first hear, after that, of the lynching of Ed. Johnson?
A. The next morning I read it in the paper.

Cross-examination by Mr. SANFORD:

Q. What is your business?
A. I am railroading now. I was with the Acme Kitchen Furniture Company then.
Q. How long have you known Nick Nolan?
A. Five or six years.
Q. Are you a close friend of his?
A. Nothing special. I have known him five or six years.
Q. You are a good friend of John Nolan?
A. Yes, sir; a very good friend of John's.
Q. You and John worked together in this election matter?
A. Yes, sir.
Q. When did you first hear that Nick Nolan was con-
950 nected with this case, or accused of being connected with it?
A. As well as I remember, about two months afterward.
Q. That was when the notice came out in the papers stating that suit had been brought?
A. Yes, sir.
Q. There never was anything in the papers until this suit was brought by the Government, accusing any particular man of being connected with it?
A. No, sir; not that I saw.
Q. You read the papers regularly, all the way through?
A. I didn't see anything until a couple of months, I guess.
Q. You never saw anything about it until it came out that the Government had brought this suit?
A. No, sir.
Q. Who asked you where Nick Nolan was that night? Who first spoke to you about it?
A. Nobody. I volunteered it, and went to Mr. Nolan myself.
Q. He did not come to see you then?
A. No, sir.
Q. That was after this notice came out?

A. Yes, sir; about two months.

Q. Have you anything else to fix this date in your mind, besides the fact that you saw in the paper the next morning that there has been a lynching?

951 A. No, sir; no more than just being that the thing was not done every day, you know, it made me recall where I was, and all about it. I saw it in the paper, and it was talked at the shop where I worked.

Q. Where did you work at the time?

A. I was working for the Acme Furniture Company No. 2, at the time, on East End avenue, at the time.

Q. What time did you go into that saloon?

A. I went into that saloon at 9.30.

Q. Did you take any drinks in there?

A. After Nick came in we had beer together, I believe.

Q. How long did you stay?

A. I stayed about thirty minutes.

Q. Where did you go?

A. From there?

Q. Yes.

A. I went home.

Q. Where had you been before that evening, after supper?

A. I had been on Montgomery avenue, and around. I left home about 7.30.

Q. Where had you been on Montgomery avenue?

A. I went to Harrington's, and Scott Price's, and two or three of the clothing stores.

Q. What were you doing?

A. I was electioneering for Mr. Bush, and seeing all the people I could.

Redirect examination by Mr. SHEPHERD:

952 Q. When you first saw it in the paper that Nick Nolan was accused of this thing, what did you say you did?

A. I went to Mr. Nolan and told him——

Mr. SANFORD. I object to what he told him.

Mr. SHEPHERD. I do not ask for that.

By Mr. SHEPHERD:

Q. You went to see him?

A. Yes, sir.

Q. State whether or not you informed him you would be a witness.

A. I told him I would be a witness for him.

Q. To show where he was?

A. Yes.

Mr. SANFORD. I object to the statement that he told him he would be a witness, as incompetent.

Mr. SHEPHERD. That is replying to your cross-examination, but I think it is competent.

Mr. SANFORD. My cross-examination was over. That was a late reply to my cross-examination.

Recross-examination by Mr. SANFORD:

Q. Are you kin to Mr. Nolan?

A. No, sir; none whatever.

Q. Are you in any business relations with him?

A. No, sir.

953 Redirect examination by Mr. LYNCH.

Q. You were canvassing against Sheriff Shipp at the time?

A. Yes.

Q. And you and John Nolan carried that ward against him?

A. No, sir; but we done the best we could with it.

Q. You had been all over the county, or all over the ward canvassing against him at that time?

A. Yes, sir; all over the ward.

Q. Had you heard any talk of this lynching?

A. No, sir; none at all.

Q. You had heard no discussion of it?

A. No, sir.

Q. And there was no apprehension of any mob that night?

A. No, sir; none whatever.

Recross-examination by Mr. SANFORD:

Q. Had you not heard, from the time Ed Johnson was first arrested, or charged with the crime, that there was danger that Ed Johnson would be lynched?

A. No, sir.

Q. There had been no excitement in the community about it?

A. There had been excitement at the start, when he was first arrested.

Q. You did hear that there was some danger at the start, then?

954 A. When he was first arrested, but after the court took hold of him I heard no more.

Q. You did not know they were having extra guards during that time?

A. No, sir.

Q. You did not know they were having extra guards at the jail every night up to about this night?

A. No, sir.

Q. You did not know of any excitement or danger, or that anybody had any idea there was going to be a lynching?

A. No, sir.

Q. Everything was as smooth as a summer sea and there was no danger in sight. After the court got hold of him it was all smooth and there was no danger?

A. As far as I know; I heard of nothing.

ALFRED SMITH, colored, a witness produced on behalf of the defendant, Nicholas Nolan, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Where were you at the time Ed. Johnson was lynched in March of last year?

A. I was working for Mr. Nolan at the time.

Q. On that particular night when Ed. Johnson was lynched
955 where were you?

A. I was working at the time he got killed. I didn't know nothing about it until next morning. I was working for Mr. Nolan at the time.

Q. What sort of work were you doing?

A. I was porter for him.

Q. You were porter in his saloon?

A. Yes, sir.

Q. How do you know where you were the night Johnson was lynched?

A. I heard they lynched him that night, and that made me remember it was that night, the next morning. I didn't know it until that next morning.

Q. When you heard it next morning, what makes you know where you were the night before?

A. I heard them reading it in the paper, you know. That is how it came for me to know it.

Q. Where was Nick Nolan that night?

A. He was there that night.

Q. Where?

A. He was at the bar.

Q. What time did he come to the bar, and what time did he go away from it?

A. He was there about 6 o'clock and he left about half past 9.

Q. Do you know where he went when he left?

A. No, sir.

Q. Did he say at the time he was leaving where he was
956 going?

A. No, sir.

Q. State whether or not you know that that was the night that Johnson was lynched.

A. I didn't know it until the next morning.

Q. You are a colored man, are you?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. Are you working for Mr. Nolan now?

A. Yes, sir.

Q. And you have been for how long?

A. I have been working there for about seven or eight or nine years.

Q. You have worked in the saloon all the time?

A. Yes, sir.
Q. Does Mr. Nolan run a saloon?
A. Yes, sir.
Q. How long has he been running a saloon? Ever since you have been working for him?
A. Yes, sir.
Q. Does he keep bar himself?
A. Yes, sir; he takes one turn.
Q. He takes one turn at keeping bar?
A. Yes, sir.
Q. How do you happen to remember where he was on that particular night?
957 A. I just heard them reading it in the paper.
Q. They did not read anything in the paper about Mr. Nolan, did they?
A. No, sir; not that morning they did not.
Q. They did not read anything about Mr. Nolan. How do you happen to remember, just from reading in the paper that there had been a lynching, where Mr. Nolan was?
A. I heard it afterwards, in the paper, about his name being in the paper.
Q. That was a long time afterwards, was it not?
A. Yes, sir.
Q. It was a long time afterwards, until it got into the paper, was it not? Isn't that so? It was two or three months after the lynching before it got in the paper that Nolan was charged with having anything to do with it. Is not that so?
A. No, sir; it was a week or two, I think. I don't know.
Q. It was not until it came out that the Government had brought that suit; that was when it got into the paper, was it not?
A. Yes, sir; I reckon so. I can't read myself. I am just telling you what I heard them read.
Q. You heard that the Government had brought suit against Mr. Nolan and a lot of other defendants, accusing them of having been connected with that lynching? Is not that so?
A. Yes, sir.
958 Q. And when that came out, that was the first time you heard that Nolan was accused of having anything to do with it? Is not that so?
A. I don't know whether he had anything to do with it or not.
Q. I did not ask you that. I do not want to confuse you. You did not know that Nolan was accused of having anything to do with this thing until it came out in the paper that the Government had brought this suit against him. That is true?
A. Yes, sir.
Q. Did he serve one turn in the bar regularly, every night?
A. Yes, sir.
Q. Every night?
A. No, sir; not every night.

Q. Did he do it frequently?

A. He would come there every night nearly, but he didn't serve every night.

Q. He would come there just like he did the night you have been talking about?

A. Some nights he would, and some nights he wouldn't.

Q. How often would he come over there at night?

A. Three or four times every week.

Q. He would come in after supper, and leave at eight, or nine, or ten o'clock?

A. Yes, sir. Sometimes he would leave earlier and sometimes he would stay until 10.

959 Q. How do you remember the hour he came and the hour he left that particular night? What is it that makes that night, so far as you know at that time, any different from any other night? He was in the habit of coming over there?

A. Yes, sir; he was there looking at the books that night.

Q. How do you happen to remember he was looking at the books on that particular night?

A. The next morning I heard about the mob and recollected his being in the bar.

Q. The paper did not say anything about Nolan and you did not suspect him at that time?

A. No, sir; the reason I recollected it is hearing them read about the mob. Next morning when I heard them read in the paper I recollected he was working on the book.

Q. Because you heard next morning that there had been a lynching, although nothing was said about Nolan, that makes you recollect he was working on the books the night before?

A. Yes, sir.

Q. How often did he work on the books?

A. Once or twice a week.

Q. When was the last time before that that he worked on the books?

A. I don't know what night.

Q. Did he work on them Friday night, Saturday night, Thursday night, or Wednesday night? Do you remember how that was?

A. No, sir; I don't remember exactly.

960 Q. Take the Saturday night before the lynching. Do you remember what time he got to the bar?

A. Sometimes he came there on Friday night or Thursday night.

Q. Do you remember what time he came there on Saturday night, or what time he left?

A. Saturday night?

Q. Yes; the Saturday night before the lynching. Do you remember on any other night that month the time Nolan came to the barroom and the time he left, except this particular night?

A. Saturday nights he came and stayed clean to 11 o'clock on Saturday nights.

Q. Do you remember that particular Saturday night before the lynching?

A. No, sir; he was there every Saturday night.

Q. But what he did on any particular Saturday night you do not remember, do you?

A. He attends to his books on Saturday nights.

Q. But take any particular Saturday night, and you do not remember whether he was there or not, or how late he stayed?

A. He stays until 11 o'clock Saturday nights.

Q. Is there any other night out of all last year that you can tell us the time Mr. Nolan came to the barroom and the time he left, except this one particular night?

A. Yes, sir; a lot of times through the week he has come and stayed until 10 o'clock.

961 Q. Can you name a single night and fix it?

A. No, sir.

Q. Is it not a fact that what you remember about this is that it was his custom to come to the bar and stay there, rather than what he did on this particular night?

A. No, sir; no particular nights that I know of.

Q. Do you remember, outside of the fact that he was in the habit of coming to the saloon, exactly what occurred on that particular Monday night?

A. No, sir.

Q. As to when he came and when he left?

A. No, sir; I don't know where he was at at night.

Q. Who first talked to you about this thing?

A. I heard them reading it in the paper the next morning.

Q. Who asked you where he was that night? Had anybody asked you if you remembered where he was that night?

A. No, sir.

Q. Nobody has asked you that at all?

A. No, sir.

Q. Did Nolan ever talk to you about where he was that night?

A. No, sir. He asked me about coming over here and telling them where he was that night.

Q. Did he not tell you where he thought he was? Did you and he talk it over?

A. No, sir; he didn't tell me where he went and where he was.

962 Q. Did he ask you if you remembered his being in the bar that night?

A. That made me remember it, by his working on the books. He asked me about that.

Q. He asked you if you remember his working on his books that night?

A. Yes, sir.

Q. He asked you that, and you told him you did, and then he asked you to come as a witness?

A. Yes, sir.

Q. How often did you and he talk it over?
A. He asked me to come up and tell the time he left.
Q. How often have you and he talked it over, about where he was that night?
A. He ain't talked to me more than once or twice.
Q. He has not talked to you more than once or twice. Have you talked it over several times?
A. No, sir.
Q. But you have talked about it once or twice, and he asked you if you remembered his being there and working on the books?
A. Yes, sir.
Q. When was it he first asked you that?
A. I don't remember exactly what time it was.
Q. How long was it after this suit came out, when the newspapers told about it?
A. It was about the time they had this trial before here.
963 Q. Along in last February, was it?
A. Yes, sir.
Q. That was about a year after the lynching, was it not?
A. Yes, sir; I think it was.
Q. That was the first time he spoke to you about it?
A. Right after when the paper came out, you know, about it.
Q. He spoke to you as soon as the paper came out, did he? I am asking you if he spoke to you as soon as it came out in the paper?
A. Yes, sir; he said something to me about it. He said it was talking about it in the paper, and he wasn't guilty about it.
Mr. SANFORD. I note an objection to the answer as hearsay.

By Mr. SANFORD:

Q. I am asking if he talked to you about it at that time.
A. Yes, sir.
Q. You are still working for him?
A. Yes, sir.

NICHOLAS NOLAN, a witness produced on behalf of the defendant Nicholas Nolan, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Are you a defendant in this case?
964 A. Yes, sir.
Q. Your name is Nicholas Nolan?
A. Yes, sir.
Q. Commonly called "Nick" Nolan?
A. Yes, sir.
Q. I will ask you to state whether or not you had anything to do with the lynching of Ed. Johnson.
A. No, sir.
Q. Were you at or about the county jail at all on the night he was lynched?

A. No, sir.

Q. I will ask you to state whether or not you were at or about the county bridge, where the lynching occurred.

A. No, sir; I was not.

Q. State whether or not you the man that tied the rope around Ed. Johnson, in the attempt to hang him, at the county bridge.

A. No, sir.

Q. Are you acquainted with Mr. Robert Pritchard, the reporter, who has been here present during this trial?

A. Only slightly.

Q. I will ask you to state whether or not you hit Mr. Pritchard there.

A. No, sir.

Q. You were not on the county bridge that night?

A. No, sir; I was not on the county bridge that night.

Q. Tell the commissioner where you were that night.

A. I was in my place of business that night.

Q. Where is your place of business?

965 A. 117 Whiteside.

Q. How far was it from the county jail?

A. I imagine it must be about a mile and a fraction over, maybe, to the county jail.

Q. I will ask you to state whether or not you had any knowledge or information that Ed. Johnson was going to be lynched.

A. Not the least; no, sir.

Q. I will ask you to state whether or not you encouraged or aided and abetted in any way the lynching of Ed Johnson.

A. No, sir; not the least; no, sir.

Q. Tell now what time you got to your place of business.

A. I got to my place of business, I expect, about 7 o'clock, after supper. I had a little work to do about there, straightening up some whiskey cases and such as that. I stayed there, I guess, until about 20 minutes of 10. My brother phoned to me and wanted to have a talk with me as I came home. I left the bar and went down by my brother's place. He was in the bar, and a gentleman named Williamson, standing in the bar, talking. We had a couple of glasses of beer, and 10 o'clock came, and John says "Boys, I will have to close up"——

Q. You must not tell what your brother said.

A. Yes, sir.

Q. Who else was drinking with you?

A. Mr. Williamson—J. C. Williamson.

966 Q. What time did your brother close?

A. At 10 o'clock.

Q. What time did you and he leave the saloon?

A. We left the bar about a quarter after 10.

Q. You started to go out——

A. I started to go out with Mr. Williamson, and he called me back.

Q. How long did your brother and you confer together about this matter of business after he called you back?
A. About ten or fifteen minutes.
Q. Then where did you go?
A. We went home.
Q. State whether or not you went into your house.
A. We went in and went to bed, and went to sleep.
Q. And you stayed there the balance of the night?
A. Until next morning.
Q. When did you first hear of this lynching of Ed. Johnson?
A. Not until next morning. I heard of it next morning. Well, in the newspaper, when I read the paper next morning.
Q. You read the paper and found it there?
A. Yes, sir.
Q. State whether or not that was the first information you had of the lynching of Johnson.
A. That was the first information I had.
Q. That was the first thing you knew about anybody going to lynch him?
967 A. Yes, sir.
Q. Do you remember when you first talked to your colored porter, Smith?
A. Just after I read it in the newspapers that the Government had us under arrest, or whatever you might call it, after Williamson came and told me——
Mr. SANFORD. Do not state what he told you.
The WITNESS. After it was in the papers.

By Mr. SHEPHERD:

Q. State whether or not your attorneys, at the time they were preparing your answer, did not also contemplate filing the affidavits of these people.
A. Yes, sir.
Mr. SANFORD. I object to that.
Mr. SHEPHERD. I wanted to fix it as the time when he talked about it.

By Mr. SHEPHERD:

Q. State whether or not that was when you talked to this man Smith, to know what he would testify.
A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. How old are you?
A. Thirty-one years of age.
Q. Do you know Mr. Marquette?
A. Yes, sir.
Q. How old a man is he?
968 A. Well, I don't know. I believe Will is about thirty years of age, or something like that.
Q. Do you know Alfred Handman?
A. Yes, sir.
Q. How old is he?

A. Alf. must be a man, I guess, of forty.
Q. Do you know Paul Werner?
A. No, sir; I am not acquainted with Werner.
Q. Did you see him on the stand yesterday?
A. I saw him on the stand yesterday.
Q. How old a man is he; young or middle-aged?
A. I would judge his age to be about 28 or 29; something like that.
Q. What is your business?
A. I am a saloon keeper.
Q. How long have you been in that business?
A. I have been in it for ten years.
Q. Have you ever been in any other business?
A. No; of course I have worked at my trade.
Q. Do you attend ba
A. No, sir.
Q. Do you attend bar at all?
A. Yes, I take a turn behind the bar.
Q. Have you ever regularly attended bar?
A. Just at my place; yes, sir.
Q. In your place you take your turn now sometimes?
A. Yes, sir.
969 Q. Is it an unusual thing for you to go to your place of business at night and stay there after supper?
A. No, sir; it is not.
Q. What was there to fix on your mind the fact that you were there that night?
A. Well, I know one thing that made me remember that night. I know it was Monday night. Monday night is always a busy night in a saloon, especially out in our end of town. The whiskey case was low and I had to stock it up, and get open a lot of boxes, tobaccos, and such, and fill the cases.
Q. Are you married?
A. Yes, sir.
Q. How many are there in your family?
A. Three; my wife and two children.
Q. How old are the children?
A. One is three years old yesterday, and the other——
Q. They are little folks?
A. Yes, sir.
Q. I wanted to find out whether they were little or grown. Who else was there, that you remember, at your saloon that night?
A. That night?
Q. Yes.
A. I don't remember. Several parties came in and had drinks.
Q. Do you remember any of the defendants in this case being there that night?
A. At my place?
Q. Yes.
970 A. No, sir.

Q. Did you have any talk with any of them that afternoon?
A. No, sir.
Q. Did you see any of them that afternoon?
A. No, sir.
Q. Are you sure about that?
A. I am sure.
Q. Do you belong to any club or organization that any of these other defendants belong to?
A. Yes, sir; with Mr. Williams.
Q. Luther Williams?
A. Yes, sir; we belong to the same organization.
Q. Who else; any of these other defendants? Who is Luther Williams?
A. He is a saloon keeper, I believe, on Market street.
Q. On Market street?
A. Yes, sir.
Q. Is there any other defendant here that belongs to that organization?
A. Well, yes.
Q. Who is it?
A. Mr. Baker belongs to the organization.
Q. Who?
A. Charlie Baker.
Q. He is a deputy sheriff?
A. Yes, sir.
971 Q. I will read the list of the defendants to refresh your recollection? Joseph F. Shipp?
A. No, sir.
Q. Did he ever belong?
A. Not that I know of.
Q. Frank Jones; Matt Galloway——
A. I am not sure about Matt. It has been quite a while since I have been to a meeting.
Q. You think Galloway belongs?
A. I am not sure. I believe he does, though.
Q. C. A. Baker. Is that the Baker you spoke of a minute ago?
A. Charley Baker.
Q. He belongs?
A. Yes.
Q. T. B. Taylor?
A. I don't know about Mr. Taylor.
Q. Fred Frawley?
A. Mr. Frawley? I know he was a member. I am not certain now, though.
Q. You know he was a member, but you are not certain whether he was at that time. George Brown; Jeremiah Gibson?
A. No, sir.

Q. Marion Perkins?
A. No, sir.
Q. Joseph Clark; Nick Nolan—you know he b'longs. Paul Werner?
A. Not that I know of.
972 Q. Luther Williams?
A. Yes, sir.
Q. Paul Pool?
A. I don't know him at all.
Q. Will Marquette?
A. No, sir.
Q. William Beeler? Claude Powell?
A. No, sir.
Q. Charlie Powell?
A. No, sir.
Q. Bart Justice?
A. No, sir.
Q. John Jones?
A. No, sir.
Q. A. J. Cartwright, R. F. Cartwright?
A. No, sir.
Q. Henry Padgett?
A. No, sir.
Q. William May?
A. No, sir.
Q. Frank Ward?
A. No, sir.
Q. John Varnell?
A. No, sir.
Q. Alfred Hammond?
A. No, sir.
Q. The only ones you remember are the men you have named?
973 A. Yes, sir.
Q. What is the name of the organization?
A. The Fraternal Order of Eagles.
Q. You do not remember any others besides those you have named?
A. No, sir; there may be others. I don't know.
Q. Where is the meeting place or the lodge room?
A. We meet upstairs over the Mecca cigar store. I think it is the Mecca; I am not sure—four or five stairways from the corner of Ninth and Market street; four or five hall doors, rather, I mean.

Mr. SHEPHERD. We desire to introduce Mr. Robert Pritchard, when he comes. He is away on the mountain to-day, I understand, reporting for the Bankers' Association. We reserve the right to introduce him, and with that reservation will close the case for Mr. Nolan.

974 *Additional testimony on behalf of the defendant, William Mays.*

A. C. LIEB, a witness produced on behalf of the defendant, William Mays, being first duly sworn by the Commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Are you the son-in-law of Mr. William Mays, a defendant here?

A. Yes, sir.

Q. At the time of the lynching of Ed. Johnson state whether or not you lived at the same house with Mr. Mays?

A. Yes, sir.

Q. I will ask you to state whether or not you know where Mr. Mays was that night?

A. Well, I presume he was at home——

Q. Do not assume. You do not know?

A. No, sir.

Q. Why is it you do not know where he was?

A. Because I would be home after closing up the store, about 8 o'clock, and I eat supper——

Q. Speak a little louder.

A. I get home about 8 or half past 7, or eight or nine or 10 o'clock. I never eat supper with the others, and they go to bed real early. My business always keeps me in town until 7, or 8, or 9, or 10 o'clock. I never see him unless——

975 Q. If he was there you did not see him when you got home?

A. No, sir.

Q. On the following morning state whether or not you heard of the lynching of Ed. Johnson.

A. Yes, sir.

Q. What did you do with respect to notifying your family about it when you heard of it?

A. I telephoned home.

Q. Your wife was there, living with her father at that time?

A. Yes, sir.

Q. I will ask you to state where she lives now.

A. At Ridgedale just now, for the summer.

Q. Is your wife able to be here at court as a witness?

A. No, sir.

Q. Why?

A. Well, she is——

Q. She is in a family way, and in an advanced state of pregnancy?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. You are Mr. Mays' brother-in-law?

A. No; I am his son-in-law.

Q. I misunderstood you. I thought you married his sister.

Mr. SHEPHERD. He married Mr. Mays' daughter.

By Mr. SANFORD:

976 Q. As I understand you, you do not really remember what did happen that night, except that it is usual for you to do as you have testified; and you went home about the same time you usually did?

A. Yes, sir.

Q. You do not remember the particular time, or what you did, except that it is usual for you to do it. That is all? Is that right?

A. I wouldn't exactly tell what time I got home that night. I couldn't exactly fix the hour.

Q. You have no special recollection about it, except that that is the usual time for you to get home. That is about all there is to it, is it not?

A. Anybody knows where he is the night before, after all the excitement the next day. Anybody recollects where he was.

Q. You know you went home?

A. Yes.

Q. But you do not know what time you went home?

A. I went home between 8 and 9 o'clock.

Q. You do not remember the exact time?

A. No, sir.

Q. What is you business?

A. I am a baker.

Q. How far is your place of business——

A. The way it is, at the time I had the store separate from the bakery.

Q. You did not see that lynching, did you?

977 A. No, sir.

Q. Did you go out there yourself to see it?

A. No, sir.

Q. You did not have anything to do with it, or see it, in any way?

A. No, sir.

Mr. DANIELS. Mr. Commissioner, Mr. Sanford and myself have made this agreement, which we desire to be taken down, with respect to the Marquette case. I will dictate it to the stenographer:

It is agreed that R. J. Miller, the druggist, where the defendant William Marquette claims to have gotten two prescriptions refilled on the night of March 19, 1906, would swear if called as a witness that his books do not show that any prescriptions were refilled for Mr. Marquette at that time; and further that such books would not show the refilling of such prescriptions unless a charge had been made on the books for such prescriptions, and that the books do not show any charge against Mr. Marquette on that day.

Mr. SANFORD. That is all right.

978 Mr. SHEPHERD. We will not call the case of Henry Padgett. I wish to introduce for Mr. Padgett all the witness that impeached Stonecipher when we were trying the case of Handman, and consider them in evidence in Mr. Padgett's case.

Mr. SANFORD. With the same reservation of the right to recall them for further cross-examination.

Mr. SHEPHERD. We understand that. Call Mr. Chambers.

Testimony on behalf of the defendant Henry Padgett.

ALBERT C. CHAMBERS, a witness produced on behalf of the defendant Henry Padgett, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Mr. Chambers, where did you live at the time of the lynching of Ed. Johnson?

A. 813 Henderson avenue, Highland Park.

Q. Highland Park is a suburb of the city of Chattanooga?

A. Yes, sir.

Q. Did you know the defendant Henry Padgett at that time?

A. Yes, sir.

Q. How long had you known him?

979 A. I have known of him for eight or ten years.

Q. Were you with him the night the lynching occurred?

A. Why, I was with him; yes, sir.

Q. How much of the evening did you spend in company with the defendant, Padgett?

A. I was in a place where he was at from 6 o'clock until 10.

Q. Where was that place?

A. The Stag Hotel.

Q. Were you in the barroom part of it, or the hotel part?

A. I was in the billiard room or pool room.

Q. That is where Padgett was, too?

A. Yes, sir.

Q. What were you doing in there?

A. I was playing pool part of the time.

Q. What was Padgett doing?

A. He was sitting down in a chair.

Q. During the time you were not playing pool, what were you doing?

A. I was sitting around.

Q. I will ask you to state whether or not Padgett was there in the pool room all the time you were.

A. Sir?

Q. Was Padgett there in the pool room all the time you were?

A. Yes, sir.

Q. What time did you leave the pool room?

980 A. I left the pool room shortly after 10. It may have been five minutes, or something like that.

Q. Did Padgett leave with you?

A. Yes, sir.

Q. Where did you go?

A. We went out to the bar. Him and a fellow named Dave McJunkin and Will Gray said they wanted a drink——

Mr. SANFORD. I object to the statement.

By Mr. SHEPHERD:

Q. You need not state what anybody else told you. Where was that barroom?

A. Al. Stanley's Stag Hotel.

Q. Who went into the barroom part with you?

A. We didn't go into the barroom part.

Q. When you went from the billiard room where did you go?

A. We went out on the street.

Q. What did you hear when you got out on the street?

Mr. SANFORD. I object to statements.

Mr. SHEPHERD. I want to know if he heard anything about the lynching. That is all I am after.

The WITNESS. I didn't hear anything direct about the lynching.

By Mr. SHEPHERD:

Q. What did you hear in connection with the lynching of Ed. Johnson when you went out on the street that evening?

A. I didn't hear anything about the lynching.

Q. Where did you go when you went out on the street?

981 A. I caught a car and went home.

Q. Where did Henry Padgett go?

A. I don't know.

Q. You left him there at the Stag Hotel?

A. Yes, sir.

Q. Who did you leave him in company with?

A. Dave McJunkin and Will Gray.

Q. State whether or not you are positive that was the night the lynching occurred.

A. I am positive.

Cross-examination by Mr. SANFORD:

Q. What makes you positive?

A. I was reading in the paper next morning——

Q. Did the paper next morning say anything about Henry Padgett or you?

A. No, sir.

Q. There was nothing to connect either of you with it in any way?

A. Sir?

Q. There was nothing to connect either of you with it in any way, to bring it to your attention in that way? You have never been said to have had anything to do with it, have you?

A. No, sir.

Q. When did you first hear that Henry Padgett's name was connected with it? Some months afterwards, was it not?

982 A. The first I heard of it was when Stonecipher said something about it through the paper.

Q. That was the first you heard. That was along in February of this year, and that was the first you heard of it?

A. That was the first I heard of it in connection with this case.

Q. That was the first time that you heard that Henry Padgett was said to have had anything to do with it?

A. Yes, sir.

Q. What is your business?

A. I am a carpenter by trade.

Q. Have you ever had any other business?

A. No, sir.

Q. What business are you in now?

A. Carpenter.

Q. How long have you known Henry Padgett?

A. I have known of him for eight or ten years.

Q. How long have you known him?

A. I have been personally acquainted with him for four or five years.

Q. Is he an intimate friend of yours?

A. He is not an enemy.

Q. I did not ask you that, did I?

A. No, sir.

Q. I asked you if he was an intimate friend of yours. What is your answer to that question?

A. No, sir.

983 Q. He is not an intimate friend. Is he a friend?

A. Yes, sir.

Q. Have you worked on the same work together?

A. No, sir.

Q. How often do you see him? How often have you seen him in the last four or five years?

A. Well, I have seen him on an average of once a month.

Q. Where do you see him?

A. I have seen him on the street.

Q. You have seen him on the street once a month, on an average?

A. Yes, sir.

Q. That is where you see him?

A. Not all the time. I have seen him on his work.

Q. Where else have you seen him?

A. I have seen him at the Stag Hotel.

Q. How often have you seen him at the Stag Hotel?

A. I don't remember how often I have seen him.

Q. How often, on an average, would you say?

A. I don't know.

Q. Did you ever drink with him there at the Stag Hotel?

A. I have never taken a drink with him in my life at the Stag Hotel.

Q. Have you ever seen him drink there?

A. I don't remember.

Q. Are you accustomed to go to the Stag Hotel? Is that a place you go to frequently?

A. I have been there some times.

Q. Is that a usual resort of yours in the evening?

984 A. No, sir.

Q. You frequently go there and play pool and billiards?

A. No, sir.

Q. You do not?

A. No, sir.

Q. How often do you go there?

A. I don't know exactly how often.

Q. You know more about this than we do. Give us your best recollections. Tell us the best you know how often you go there. Do you go every week?

A. No, sir.

Q. Do you go every two weeks?

A. I guess I have been that often.

Q. Have you been there once every ten days, on an average?

A. I don't know.

Q. What do you go there for?

A. I go and sit around, sometimes; and sometimes I play pool.

Q. What else do you do there?

A. I take a glass of beer there once in a while.

Q. Do you ever take anything else there? [A pause.] Is it a place where you are in the habit of going in the evening, as a matter of fact, and spending your time?

A. No, sir; I am not in the habit of going there in the evening.

Q. You think you go once in every two weeks. What time

985 of the day are you usually in the habit of going there, if you are in the habit at all?

A. Saturday night.

Q. You generally go Saturday night?

A. Yes, sir.

Q. Then you generally go once a week?

A. Yes, sir.

Q. You go there to play pool and billiards, and take beer?

A. No, sir.

Q. What do you do?

A. I play pool.

Q. Only occasionally you take beer?

A. Yes, sir.

Q. Who do you meet there when you go there, generally?

A. Everybody.

Q. Have you got any special friends that you meet there every Saturday night?

A. No, sir.

Q. Is Padgett a man that you meet there every Saturday night?

A. No, sir; I don't meet him.

Q. Have you seen him there?

A. I have seen him there.
Q. Do you generally see him there Saturday night?
A. I have seen him there sometimes.
Q. How often have you seen him there?
A. I don't remember.
Q. Do you see him usually Saturday nights when you go there? [A pause.] Do you generally see him there Saturday
986 night?
A. I see him sometimes. I never kept account.
Q. Do you see him half of the time you go there?
A. No, sir.
Q. Do you see him a third of the time?
A. I don't remember whether I see him a third of the time or not.
Q. You generally go there Saturday night. How did you happen to go Monday night this time?
A. Do you want me to tell you how I happened to go?
Q. That is what I asked you.
A. I went down to take my mother-in-law down to the train, to the Central depot.
Q. What is your mother-in-law's name?
A. Her name?
Q. Yes.
A. Mrs. W. P. Pettitt.
Q. You stopped in on the way back. Is that the idea?
A. Yes.
Q. On this Monday night you saw everybody in there?
A. I saw a crowd like there always was.
Q. You said a moment ago that you saw everybody there, did you not?
A. I didn't mean that I saw everybody in Chattanooga there.
Q. You mean that you saw everybody that was there when you said you saw everybody?
A. I mean I saw a crowd there.
Q. Oh, I misunderstood you. You saw a crowd in there
987 that Monday night?
A. Yes, sir.
Q. Who did you see besides Padgett?
A. I seen Dave McJunkin.
Q. Who is Dave McJunkin?
A. He is a carpenter.
Q. Who else?
A. Will Gray.
Q. What is he?
A. A carpenter.
Q. Who else did you see?
A. I seen Al. Stanley.
Q. Who is he?
A. One of the owners.
Q. Where did you see him?

A. I saw him in a hall.
Q. When did Dave McJunkin get there; what time of night?
A. I don't know.
Q. You do not know?
A. I don't remember.
Q. When do you first remember seeing him; what time of the night?
A. I never looked to see what time it was when I seen him.
Q. Did you look to see when Padgett came in? Did you take out your watch to see what time it was?
A. No, sir; he was there when I came.
988 Q. When did Gray come there?
A. I don't remember.
Q. Do you remember whether he was there when you came or not?
A. I do not.
Q. Do you remember whether McJunkin was there when you came or not?
A. I don't remember.
Q. But do you remember that Padgett was there, and that he was there all the time?
A. Yes, sir.
Q. Did he sit there on one seat all the time, or did he do anything else? You said he was sitting down, I believe. Did he play pool with you?
A. No, sir.
Q. He did not play pool?
A. No, sir.
Q. But he was sitting there on the seat. Did he sit right there that whole time? [A pause.] What did you see him doing?
A. He wasn't doing anything but sitting down.
Q. He was not doing anything. He just sat there. Do you remember where he was sitting?
A. He was sitting right behind the table where I was playing pool.
Q. And he sat there that four hours solid, did he?
A. I wasn't playing pool the whole four hours.
Q. How long did you play pool?
A. I don't remember. I kept no time of it.
989 Q. Did you play half an hour, or did you play all four hours? You say you did not play all four hours. How much did you play?
A. I don't remember.
Q. When did you commence playing?
A. I don't remember that.
Q. Do you remember when you quit playing?
A. I quit playing about 10 o'clock.
Q. But you do not remember when you commenced. Fix the time when you commenced the best you can.
A. I never looked at the time.
Q. Have you any recollection about it?

A. I don't remember what time it was.

Q. You do not remember what time it was, and you do not remember what Padgett was doing until you saw him sitting there when you were playing

A. He was just sitting there.

Q. He was sitting behind you, and that is all you remember about it?

A. He wasn't behind me all the time.

Q. What else was he doing?

A. He was just sitting there in the chair in the pool room.

Q. Just sitting in the same chair?

Q. I don't remember whether he was sitting in the same chair or not.

Q. Did you play at more than one table?

A. No, sir.

990 Q. When you quit playing what did Padgett do?

A. He didn't do anything.

Q. Before you began playing what was Padgett doing?

A. Sitting in the chair.

Q. Sitting in the same chair. Does Padgett play himself?

A. No, sir; I never seen him play.

Q. Were you around there talking to Padgett?

A. I spoke to him, and talked to him some.

Q. Who else did you talk to that evening?

A. Dave McJunkin.

Q. Who else?

A. Will Gray.

Q. Is there anybody else you remember that you talked to that evening besides them and Padgett? You were there about three hours and a half, were you not?

A. Yes, sir.

Q. And you do not know how much time you played pool?

A. I never kept no time of it.

Q. Do you remember anybody else you talked to besides those men you have mentioned?

A. I talked to Al. Stanley.

Q. You have already mentioned him. See if you can remember somebody else that you talked to in that pool room there that evening, or at the hotel or barroom, or anywhere else?

A. I don't remember talking to anybody else; no, sir.

991 Q. Do you remember anybody else you saw there? You saw everybody—that is, you saw the crowd, you say?

A. I saw the usual crowd that generally hangs around there.

Q. Who is the usual crowd that generally hangs around there?

A. I don't know.

Q. Then how do you know it is the usual crowd that generally hangs around there? You go there every Saturday night and see the usual crowd that hangs around, but you do not know who they were. Is that what you mean?

A. I am not acquainted with them.

Q. You can not tell anybody else that you saw except those you have already mentioned?

A. No, sir.

Q. Who did you play pool with? You know that?

A. I played with Dave McJunkin.

Q. Who else did you play with?

A. I don't remember playing with anybody else.

Q. Is Dave McJunkin one of the fellows in the crowd that usually hangs around there?

A. No, sir.

Q. Was that the first time you ever saw him there?

A. That was the first time I saw him in a good while.

Q. When was the last time before that that you had seen him?

A. I don't remember.

992 Q. Have you seen him there since?

A. No, sir.

Q. Have you seen him there recently?

A. No, sir.

Q. How far was this pool room from the county jail? Was there a saloon attached to it; and how far was the bar from where you were playing?

A. About thirty or forty feet.

Q. Was the bar in the same room?

A. In the same building.

Q. I asked if it was in the same room?

A. No, sir.

Q. Were there adjoining doors?

A. Yes, sir.

Q. How far was this building from the county jail?

A. About three blocks.

Q. North or south?

A. North.

Q. How long have you been living here, Mr. Chambers?

A. Twenty-three years.

Q. Are you any kin to Tom S. Chambers?

A. Tom S.?

Q. Yes. Or Tom L.?

A. No; I don't know him.

Q. You do not know anybody named Chambers?

A. Tom S. or Tom L., I don't.

Q. Do you know anybody named Tom Chambers?

A. My father's name is Thomas Chambers.

Q. What is his middle name?

993 A. Thomas Arnold.

Q. Thomas A. Chambers?

A. Yes, sir.

Q. How old a man is your father?
A. I think he is 51.
Q. How long have you been living in or near Chattanooga?
A. Twenty-three years.
Q. Have you ever been arrested for anything?
A. Once.
Q. What for?
A. Disorderly conduct.
Q. How long ago was that?
A. I don't remember exactly.
Q. Two or three years ago?
A. Seven or eight.
Q. Have you been arrested for anything else?
A. No, sir.

Redirect examination by Mr. SHEPHERD:

Q. What time did the train leave that night that carried your mother-in-law out of the city?
A. I don't know. I don't remember exactly what time it was.
Q. What is your best recollection about it? What train was it—what railroad?

A. The A. G. S.

994 Q. State whether or not you took her to the Central Depot, from which the A. G. S. train departs, and stayed until the train went out.
A. I put her on the train.
Q. And then from there you came back to the Stag Hotel?
A. No, sir; I went up Market street.
Q. What time was it when you got to the Stag Hotel?
A. Between 6 and 7; I don't know exactly.
Q. And you stayed there continuously until you left?
A. Yes, sir.
Q. Did you leave before or after the saloon closed?
A. I left after it closed.
Q. The pool room runs all night, but the saloon closed at ten o'clock?
A. I don't know whether it runs all night or not?

Recross-examination by Mr. SANFORD:

Q. Where was your mother-in-law going?
A. To Rising Fawn, Georgia.
Q. Who was she going to visit?
A. She was going home.
Q. She lives there?
A. Yes, sir.
Q. How old are you?

A. Me?

995 Q. Yes.

A. Thirty years old.

DAVID H. MCJUNKIN, a witness produced on behalf of the defendant Henry Padgett, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Did you live in Chattanooga or near here at the time Ed. Johnson was lynched?

A. I lived in the suburbs, at Alton Park, about two miles and a half from here.

Q. Were you in town the night the lynching occurred?

A. I was at the Stag Hotel. I left there at 10.45. I was up there until 10.45.

Q. What time did you go to the Stag Hotel?

A. I was there about half after seven or eight o'clock.

Q. Did you stay there until you left at 10.45?

A. Yes, sir; I stayed there until the saloon closed, and then there was three or four of us in the hallway, I reckon, a half hour after the saloon closed.

Q. Was that the night Ed. Johnson was lynched?

A. Yes, sir; that was the night.

Q. How do you know?

A. I remember very distinctly that next morning I read the piece in the paper, and my mother asked me where I was at that night——

996 Mr. SANFORD. Never mind about that. I object to his statement of his mother's questions, as heresay and incompetent.

Mr. SHEPHERD. I think that is competent.

By Mr. SHEPHERD:

Q. Who was with you at the Stag saloon?

A. Mr. Chambers, Bill Gray, and Henry Padgett, and one or two other faces—I disremember the names. I know the faces, but I don't know the names, though.

Q. State whether or not it is this defendant, Henry Padgett, that you refer to as being there with you.

A. That is the fellow, all right.

Q. What time did he come to the saloon?

A. The first I noticed of him there, we had been playing pool, and he came around where we was playing, and he would put up the balls for us. He was around the table, and making himself handy around the table. I suppose half after 8, or 9 o'clock, possibly half after 8 I seen him first.

Q. State whether or not he stayed there at the pool room all the time you were there.

A. Yes, sir; he was there all the time.

Q. Where did you go when you left?

A. When we left the saloon?

Q. Yes.

A. I caught a car and went home, at 10.45—the 10.45 car.

Q. Where did Padgett go?

A. He left. I don't know. He left about the same time we did. I don't know where he went.

997 Cross-examination by Mr. SANFORD:

Q. What is your business?

A. I am a contractor and carpenter—carpenter you might say.

Q. How long have you known Henry Padgett?

A. I have been acquainted with him for about six or seven years.

Q. How long have you known Albert Chambers?

A. I have known him about the same length of time, I suppose.

Q. Are you friends?

A. The same as I meet anybody else I am acquainted with. We are only acquaintances.

Q. Do you often meet and play pool together, or meet around?

A. That is the first time I remember playing pool with either one of them.

Q. How often do you go to that place? Are you fond of pool?

A. Yes; I play down there possibly once a week. I go sometimes every other night, as I would happen in there.

Q. You play once or twice a week, probably?

A. Yes.

Q. Do you play with different people?

A. Anybody that wants to play—no especial person.

Q. Do you remember anybody you played with any other night that month, besides this particular night?

998 A. Possibly I might.

Q. Can you tell us anybody else?

A. I don't know. I couldn't be sure about that.

Q. You could not be sure about that?

A. No, sir.

Q. You were there probably five or six times that month, were you not? That was over a year ago now, was it not?

A. Yes, sir.

Q. And you play pool with different people; people you knew, and people that came in?

A. Yes, sir.

Q. And you cannot remember anybody else you played with, except on this night, when you remember these men?

A. Possibly I could call some name.

Q. Try to recall them. Let us think about it a little. Try to think of somebody you played with that month besides these men.

A. Frank Pogue's son is one.

Q. What night did you play with him?

A. Possibly two weeks previous to that.

Q. Do you remember what night it was?

A. No, sir.

Q. You remember you did play with him different nights?

A. Yes, sir.

Q. Was it Monday night, Tuesday night, Wednesday night?

A. I have no recollection.

Q. That was one or two weeks before?

A. Possibly two weeks.

999 Q. What time of night did you go there that night?

A. I usually go in there——

Q. I do not ask you what you do usually. I asked you what time you went there that night.

A. If I wanted to play pool, I would attend to my business and go in there and maybe play a game of pool after dark.

Q. What time do you usually leave?

A. I stay until quitting time; until time to close up sometimes; and sometimes I leave before that time.

Q. Who else did you see in there that night, Mr. McJunkin, except these men you have mentioned?

A. That night?

Q. Yes.

A. I can't call any names.

Q. You cannot recall any names?

A. I get interested in a pool game, and I don't try to. I play pool for amusement. I remember the names I have called, and that is all I remember.

Q. You just remember, then, Albert Chambers——

A. Clint Chambers.

Q. Clint Chambers?

A. I know him as Clint.

Q. The one who was just a witness a moment ago?

A. His name is Clint. I know him by the name of Clint.

Q. You know him as Clint Chambers.

A. Yes, sir.

1000 Q. Who else do you remember?

A. Padgett.

Q. Did Padgett play with you?

A. No, sir; he didn't play. He didn't take no interest in the game, more than he laid up the pool balls for us occasionally.

Q. Did he not sit around in the chairs?

A. He sat around. I never noticed him playing. It is possible he played a game with somebody.

Q. Who else did you see there that night?

A. I seen Bill Gray. The fact of the business is Bill Gray was working with me, and he and I went in there together that night.

Q. You and Bill Gray went in together?

A. Yes, sir.

Q. Do you know how long you and Bill Gray stayed there?

A. No, sir; I don't know how long he stayed with us.

Q. He went with you?

A. I don't know whether he stayed after the saloon closed or not. We stayed in the hall.

Q. Who else went with you? You said "us." Who did you mean?

A. These three fellows, Padgett, Chambers, and myself.

Q. Did you all go there together?

A. No, sir; I never seen either one of them before I went there.

Q. I understood you to say Bill Gray and these others went with you.

1001 A. I didn't mean that.

Q. Bill Gray went with you?

A. Yes, sir.

Q. He came there with you, did he?

A. Yes, sir; he and I came together.

Q. Did Bill Gray play in that game with you?

A. No, sir; he played at some other table.

Q. He did not play with you?

A. No, sir.

Q. Do you know when he left?

A. No, sir.

Q. Do they not have a man there to put up the balls?

A. Yes, sir; they have a man to put up the balls; but there is a custom that some fellow that is watching his friends play will lay them up on the table for their amusement, if they like to. They don't have to.

Q. And Padgett was your friend, and just for amusement he was laying them up, and working for you.

A. He is no friend of mine. I just met him on the street. I know him.

Q. I thought you said it was the custom for fellows to lay the balls up for their friends.

A. They become interested in a game. I have laid up balls on a table for fellows I had never seen before in my life.

Q. You have laid them up on the table?

A. If a fellow is a pool shark he takes that liberty.

Q. Are you a "pool shark?"

1002 A. No, sir.

Q. I understood you to say you laid them up, and that pool sharks did that; but you are not a pool shark?

A. I would like to be, you know.

Q. Is Padgett a pool shark? He was laying them up?

A. It is possible that he is. I don't know. Possibly he is a pool shark.

Q. Are you a married man?

A. No, sir; I am single.

Q. Where do you live?

A. I live at Alton Park, about two and a half or three miles out.

Q. Have you ever had any trouble? Have you ever been arrested for anything?

A. I have been arrested for frivolous offenses.

Q. For frivolous offenses?

A. For having too much fun in the city here.

Q. That was not what they called it in the warrant, was it? What did they call it?

A. Mr. Fleming here took me out one night——

Q. I am not asking about that. I am asking you if you have ever been arrested, and what for. They did not call it "having too much fun," did they? What was the indictment for? Have you ever been indicted?

A. Yes, sir.

Q. What for?

A. Me and a conductor out on the street car line had a

1003 little scrap, as they call it.

Q. What did the indictment call it?

A. It called it, I believe, assault with a knife.

Q. That is one little scrap. Have you ever been indicted for anything else?

A. No, sir.

Q. These little warrants for having fun; what did they call it—disorderly conduct, or what?

A. Taking too many drinks, is what I call it.

Q. Drunk and disorderly?

A. They called it "disorderly."

Q. Did they call it "taking too many drinks?"

A. No, sir.

Q. How many times have you been arrested in the course of your career for taking too many drinks and being disorderly?

A. Twice, I believe, is my recollection.

Q. You do not recollect any more?

A. No, sir.

Q. You may have been arrested more than that?

A. Twice is all I recollect.

Q. And once for assault with a knife?

A. Yes, sir.

Q. How old are you?

A. Thirty-five.

1004 W. B. GRAY, a witness produced on behalf of the defendant, Henry Padgett, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. What is your name, sir?

A. W. B. Gray.

Q. What was your father's name, sir?

A. W. A.

Q. How long have you lived in this vicinity, Mr. Gray?

A. Oh, about 25 years, I guess.

Q. Were you living here at the time of the lynching of Ed. Johnson?

A. I was living here, yes, sir; out at Alton Park.

Q. Where were you the night that occurred?

A. At the Stag Hotel.

Q. You do you know you were at the Stag Hotel?

A. That is——

Q. How do you happen to remember you were there on that particular night? That is what I want to get at.

A. Well, I read in the paper the next morning about it. Dave McJunkin and I were working together——

Q. How is that?

A. I read it in the paper next morning, and we were talking it over.

Q. You were talking it over next morning?

A. Yes.

Q. Who were you talking it over with?

A. We was talking to each other, you know.

1005 Q. Who do you mean by "each other?"

A. McJunkin and myself. We were in there playing pool that night until they closed up.

Q. Throw the toothpick out of your mouth, and you can get along better as a witness.

A. Yes, sir.

Q. Where were you the night that lynching occurred?

A. The night they say it occurred I was at the Stag Hotel.

Q. Who was in company with you at the Stag Hotel?

A. I don't remember who all was there.

Q. Name some of them that you remember.

A. There was Dave McJunkin, and a fellow named Chambers, and Henry Padgett, and several—I forget who all were there.

Q. When you say Henry Padgett, state whether or not you mean the defendant, Padgett; this man here [indicating the defendant Padgett]?

A. Yes, sir; that's the man I mean.

Q. What time did you go to the Stag saloon?

A. I suppose we went in about—it must have been 8 o'clock.

Q. Who went with you to the saloon?

A. McJunkin.

Q. Whom did you find in the saloon that you recognized, or that you remember, when you got there?

A. Why, this man Chambers and Mr. Padgett; and I don't know except——

Q. Padgett was already there when you got there?

1006 A. Yes, sir; I think he was there.

Q. Mr. Gray, what were you doing at the Stag Hotel?

A. We went in there to play a few games of pool.

Q. How long did you stay there?

A. We stayed until it closed up at 10 o'clock.

Q. I will ask you to state whether or not Padgett was there all the time you were.

A. Well, I think he was.

Q. What was he doing?

A. He was just sitting in a chair.

Q. Whom did you play pool with that night?
A. I don't know who he was. Dave and Mr. Chambers was playing, and I was playing with somebody else. Then I think I played a game or two with Dave McJunkin.
Q. When you left there where did you go?
A. I went out and caught an Alton Park car.
Q. Where did Padgett go?
A. I don't know, sir.
Q. It was after 10 o'clock when you left there?
A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. How far was this saloon from the jail?
A. This saloon is between Eighth and Ninth.
Q. What street is it on?
A. It is on Market street.
Q. Then it is about four blocks from the jail, is it not?
1007 A. I suppose it is.
Q. Are you in the habit of going there?
A. To the Stag?
Q. Yes.
A. We used to go there Saturday night when we were in town, you know, to play pool.
Q. Who were "we"?
A. Mé and Dave.
Q. Would Chambers generally be there?
A. No, sir; that was about the second time ever I met him there.
Q. He did not come there then every Saturday night as a rule?
A. No, sir; and we didn't either.
Q. Where did you go?
A. That night?
Q. No; every Saturday night, where did you go?
A. Sometimes we would go there; and sometimes to one place and another.
Q. Did you and Dave often go to this place, this saloon, to play pool?
A. Yes, sir; we went there very often.
Q. Did you ever take any drinks when you went there?
A. Sometimes we would take a glass of beer.
Q. Did you generally take beer?
A. Yes, sir.
Q. You went there to drink and play pool, and you used to go generally Saturday night?
1008 A. Yes, sir.
Q. Who did you know the Saturday night before, when you went there? You were there the Saturday night before?
A. I don't remember whether I was there the Saturday night before or not.
Q. How did you happen to go Monday night this time, when you generally went Saturday night?

A. We went whenever we would happen to be in town you know.

Q. But you were generally in town, and you generally went Saturday night, you said a minute ago. How did you happen to go this Monday night?

A. I don't know.

Q. You do not know how you happened to go that night?

A. No, sir.

Q. Where did you meet Dave that night?

A. We lived out there and we generally came in town together. We were working together.

Q. How did you happen to come in that night?

A. I don't really remember what business we had.

Q. Did he come for you, or did you go for him?

A. I just don't remember.

Q. You just don't remember?

A. No, sir.

Q. Did he eat supper at your house, or did you eat at his house that night?

A. I don't remember that.

Q. How far apart do you live?

1009 A. I live across the street from him.

Q. What part of town is that in? What is the name of that suburb?

A. Alton Park.

Q. How far is that from St. Elmo; and in what direction?

A. It is south or southeast.

Q. How far is it from St. Elmo?

A. I guess it is half a mile.

Q. Do you come in on the same car from St. Elmo, to get to town?

A. The Alton Park and Mountain Junction car both come to town.

Q. In coming to town, do you come by St. Elmo?

A. Yes.

Q. Where did Henry Padgett live?

A. He used to live at Ridgedale. I don't know where he lived at the time.

Q. Did you come by there when you came in on the car?

A. No, sir; that is at the foot of the ridge.

Q. That was another car line?

A. Yes, sir.

Q. Do you know where Henry Padgett was living at the time?

A. No, sir.

Q. Can you tell us how you and Dave happened to come in that night together?

A. No, I don't remember what business we had.

1010 Q. Where did you go before you went to this saloon?

A. Over to Jack Price's, I believe.

Q. What is Jack Price's—another saloon?

A. Across the street.

Q. What did you do there? Play pool or get a drink?

A. No, I believe we did play one game of pool.
Q. How many drinks did you take over there?
A. I don't remember whether we took any or not.
Q. You did take a drink over there, did you not?
A. I don't remember.
Q. What is your best recollection about it?
A. I don't remember.
Q. You went over to the saloon, but you do not remember whether you got a drink or not. Did you go to any more saloons before you got to the Stag?
A. No, sir; I think not.
Q. Then you came to the Stag. Did you get a drink when you went in?
A. I don't think we did. I don't remember whether we got a drink. We just went in to play a few games of pool.
Q. How many drinks did you take that evening?
A. I hadn't been drinking that evening.
Q. Did you take a drink at all?
A. We used to work up the mountain, and they don't have anything to drink up there.
Q. I will change my question, and instead of saying evening, I will say did you have any drinks that night?
A. Two or three glasses of beer.
1011 Q. Did you have any whiskey?
A. No, sir.
Q. How many did Henry Padgett take?
A. I don't know as I remember seeing him drink any.
Q. You do not remember seeing him drink at all?
A. No, sir.
Q. Was he around there with you all the time?
A. No—well, I just noticed him sitting in the chair.
Q. How did you happen to notice Henry Padgett so particularly that evening?
A. We were talking together, and I knew him.
Q. How long did you talk together?
A. We were around there a couple of hours, I reckon, playing pool.
Q. Was he playing pool? Did he play pool a single time with you?
A. No, sir.
Q. He was not in the game; he just sat there in the same chair; he did not move around?
A. He might have got up and went out. I don't know.
Q. He might have been out for an hour or two. You do not know whether he was out or not, do you?
A. No, sir.
Q. You just remember seeing him there when you first went in. That is really when you remember about it, is it not?

A. Yes, sir; he was there when I first went in, and when he closed up.

Q. That was considerably after 10 o'clock when he closed?

1011½ A. He closed at 10 o'clock.

Q. Then you all had drinks?

A. No, sir; we couldn't get any.

Q. Did you not go out in the hall and get drinks?

A. We tried, but we didn't get any.

Q. When you left there, and tried to get drinks, Padgett was there—all you remember is that he was there when you got there, and he was there when you left; but where he was in the meantime you do not know?

A. I suppose he was around there in the saloon.

Q. You suppose he was, but you do not know that of your own knowledge, do you?

A. No, sir; I couldn't positively swear he didn't get up and go out.

Q. You would not swear that because you do not know it?

A. No, sir.

Q. You were busy playing a game of pool, and having your own fun, and you were not looking after Henry Padgett?

A. No, sir.

Q. He was not on your mind at all that night?

A. No, sir.

Q. You were having fun of your own, and enjoying your game?

A. Yes, sir.

Q. Who else do you remember being in there that night? There is Dave McJunkin, and Padgett, you say, in there. Who else did you see in there that night? You were there three hours or three hours and a half?

1012 A. About two hours, I guess.

Q. What time did you get there?

A. Something like eight o'clock.

Q. Who else did you see there during that two hours?

A. I expect I saw half a dozen, perhaps?

Q. Half a dozen men. They were men you know, too, were they not?

A. I don't remember.

Q. There were a good deal more than half a dozen in the pool room that night, were there not?

A. I guess the pool room was full.

Q. Is the bar room in the pool room or is it a separate room?

A. It opens out of the pool room.

Q. It opens out of the pool room, and the drinks are handy?

A. The pool room is in the back part.

Q. The bar is pretty close to the pool room? They are pretty close together?

A. Yes, sir.

Q. Tell us anybody else you saw in there, in the pool room or in the bar room, that whole night, all the time you were there, besides the little crowd you have been talking about?

A. I don't remember.

Q. You can not remember?

A. No, I can't.

Q. How long does it take to play a game of pool?

1013 A. It is according to how good a pool player you are.

Q. In the case of a man who is as fine a player as you are, how long would it take?

A. It would take me a good while.

Q. How many games did you play?

A. I don't remember. We played several, though. We were there, I guess, two hours.

Q. This thing they call a "pool shark"—are you one?

A. No, sir. I have been up against several, though.

Q. Who were you up against that night?

A. I don't know who the fellow was I was playing with.

Q. Was he a pool shark?

A. No, sir; but he was a pretty good pool-player.

Q. You do not remember his name?

A. No, sir.

Q. And you do not remember anybody else you saw in there?

A. No; I don't believe I do.

Q. When did you first talk to Henry Padgett about this thing?

A. I haven't been talking to him. They sent me word—Varnell, I believe, telephoned to Alton Park that they wanted me for a witness.

Q. Before that had not Henry Padgett talked to you about your being there that night, and he being there?

A. No, sir.

Q. Have you talked it over with Chambers?

A. No, sir.

1014 Q. Have you talked it over with Dave McJunkin?

A. No.

Q. You never talked it over with anybody?

A. No, sir.

Q. None of you fellows have met to talk it over, either separately or all together?

A. We have not been together until to-day.

Q. You never talked with any of them? You never talked with Henry Padgett, and he never asked you if you remembered his being there that night?

A. No, sir.

Q. He never asked you if you remembered being there?

A. He knew I was there.

Q. He never asked you anything about whether you remembered his being there? Is that what you tell us?

A. Yes.

Q. Did he never ask you that?
A. No; I don't think he ever has.
Q. Are you certain?
A. I don't think he has.
Q. Do you say he has not talked to you about it? You are the man who knows. Has he or not talked to you?
A. No; we have not had any conversation.
Q. You have not had any conversation with Padgett or any of the other men about it?
A. No, sir.
Q. How long have you lived here?
A. About twenty-five years.
Q. What has your business been all that time?
1015 A. Mostly railroading.
Q. What railroading have you been doing?
A. I work for the Nashville road now.
Q. What position?
A. Switchman and brakeman.
Q. Did you ever get in any trouble here?
A. No, sir.
Q. Have you ever been arrested?
A. Once or twice.
Q. Did you take too much of that beer we have heard about?
A. No, sir.
Q. What were you arrested for?
A. Once for having a fight, I believe.
Q. Were you indicted?
A. No, sir.
Q. Were you arrested and taken before a magistrate?
A. A justice of the peace.
Q. What was the charge against you?
A. Fighting.
Q. Have you ever been arrested any other time? How many times have you been arrested, if you remember?
A. Twice, I believe.
Q. What was the other time you were arrested?
A. I got indicted once for carrying a pistol.
Q. What other time have you been arrested?
A. That is all, I believe.
1016 Q. Are you certain you have not been arrested any more, or indicted for anything? Have you had any more warrants against you? Just try to think about it? Are you right certain you have only been arrested twice under a warrant, or been indicted?
A. That is all, I think.
Q. That is all you recollect?
A. Yes, sir.
Q. Are you married?
A. Yes, sir.

Redirect examination by Mr. SHEPHERD:

Q. Did I understand you to say you and McJunkin talked this matter over next morning after the lynching, as to where you were the night before?

Mr. SANFORD. I object to that question. It is leading, and then it calls for hearsay testimony. I also object to the answer that may be given. I object to the form of the question, and also to the answer.

Mr. SHEPHERD. You asked about that matter.

Mr. SANFORD. He told me he never had talked it over, as I understood.

By Mr. SHEPHERD:

Q. Did I not understand you to say you and McJunkin spoke of it the next morning?

A. I went by his house to go to work, and he was reading about it.

Mr. SANFORD. I object to the statement of any conversa-
1017 tion between this witness and McJunkin; and I object to the form of the question, on the ground stated.

The COMMISSIONER. The objection will be noted.

By Mr. SHEPHERD:

Q. Answer the question.

A. He was reading to me in the paper, and wondering how it was we was in town there at the Stag and this all happened and we didn't know anything about it. He was talking to me. That is all.

Mr. SANFORD. I object to that testimony as hearsay and incompetent.

THOMAS F. DUCKWORTH, a witness produced on behalf of the defendant, Henry Padgett, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Where did you live at the time Ed. Johnson was lynched in this city?

A. I lived out on Wells brickyard—out near Douglas street.

Q. Where were you the night Johnson was lynched?

A. I was at the lodge room until 9 o'clock, and I came out of the lodge and went to the saloon.

Q. What lodge was that?

A. The Junior Order of United American Mechanics.

1018 Q. You know that was the night you were at the lodge and went to the Stag Hotel?

A. That was the night they said it was done.

Q. When did you hear of the lynching?

A. When I got up next morning.

Q. Was there anything that occurred the next morning, when you heard of the lynching, to remind you of where you had been the night before?

A. Only hearing of the lynching. That reminded me of it.

Q. When you went to the Stag Hotel what time was it?

A. It was a little after 9. The lodge let out about 9 o'clock—somewheres about 9 o'clock when I went up there.

Q. Did you go in the hotel or the pool room part?

A. I went in the pool room part.

Q. When you went into the pool room did you find anybody there that you knew?

A. I seen Henry Padgett sitting there asleep. I walked up and spoke to him, and shook him, and I said "Hello, Henry." I don't know what he said to me. I turned around directly and said——

Mr. SANFORD. I object to the conversation, and to all this testimony as to conversations.

By Mr. SHEPHERD:

Q. You saw Henry Padgett sitting in a chair?

A. Yes, sir; in the pool room.

Q. I will ask you to state whether or not you left with Henry Padgett?

1019 A. Yes, sir; I left with Henry Padgett something after 10 o'clock. I don't know what time.

Q. Who else was with you?

A. There was no one else with us when we left. We met some one in the door as we started out—two gentlemen; I didn't know them.

Q. Where did you meet them?

A. In the door there as we started out of the pool room.

Q. Did you all go out of the pool room together, out on the street?

A. No, sir; me and Padgett went out on the street. The other fellows, I don't know where they went. We met them there and Padgett stopped and spoke to them. I don't know who they were; and me and Padgett came on out.

Q. Then where did Padgett go?

A. Me and Padgett came up to Seventh street and Georgia avenue, and Padgett got on a car and I went on home.

Q. What car did he get on?

A. He got on the Oak street car.

Q. State whether or not the Oak street car goes in the direction of where Padgett lives.

A. Yes, sir; it goes in that direction.

Q. And away from the jail?

A. Yes, sir; he got on the car going towards Ridgedale.

1020 Cross-examination by Mr. SANFORD:

Q. How old are you?

A. Twenty-four.

Q. What is your business?

A. Fireman at Wells's brickyard.

Q. How long have you been there?

A. About five years.

Q. Have you ever been in any other business besides tnat?

A. I was with the National Boat Oar Company.

Q. How long have you known Henry Padgett?

A. I have been knowing Henry about five or six years. I don't remember just how long.
Q. You say your lodge met that Monday night?
A. Yes.
Q. What lodge is it?
A. The Junior Order of United American Mechanics.
Q. Who was the officer that presided that night?
A. I was the councillor of that lodge myself.
Q. Who was the next man to you—the secretary?
A. The secretary was—let's see——
Q. Who was present that night?
A. I don't remember just who.
Q. Who is the secretary that keeps the records of the lodge?
A. Mr. Scott, at that time.
Q. Who would have the records now?
1021 A. Mr. Scott.
Q. What is his name?
A. I don't know what his other name is.
Q. You do not know what his initials are?
A. No, sir; I do not.
Q. Is it Frank Scott, or Tom Scott? You know the secretary of your lodge, do you not?
A. I forgot his initials. I never paid much attention to it. We all used to call him Mr. Scott up there.
Q. You do not remember his first name?
A. No, sir.
Q. What did he do?
A. He works at some tanyard here in town, I think.
Q. He is the secretary, and would have the records of the meetings?
A. I think he would.
Q. He is the custodian of the records?
A. Yes.
Q. Did Padgett belong to that lodge?
A. Not that I know of.
Q. You never saw him there?
A. No, sir.
Q. You did not go with him to the Stag Hotel?
A. No, sir; he was there when I went there.
Q. You went from the lodge meeting to the Stag Hotel?
A. Yes, sir.
Q. Did anybody go with you besides yourself?
1022 A. I think there was one man with me. I don't remember whether he went in with me or not.
Q. How far is your lodge from the hotel?
A. It was at that time on Seventh street—the N. B. Forrest Hall.
Q. How far is it from the saloon?
A. I don't know just how far it is. I don't remember the blocks.
Q. How many blocks; four or five?

A. Yes, sir; it was on Seventh street.
Q. How often do you go to that saloon?
A. I don't go there very often.
Q. What did you go there for?
A. I went up to watch them play pool.
Q. Did you play pool yourself?
A. No, sir.
Q. Did you take any drinks?
A. No, sir.
Q. You were not with these other men? Do you know Mr. Chambers, who has been a witness here?
A. No, sir; only I just met him a time or two. I know him when I see him.
Q. Do you know Will Gray, who has been a witness?
A. No, sir.
Q. You were not with that crowd?
A. No, sir. I might have seen them in the saloon; but if I did, I don't know it.
Q. You went there about 9 o'clock.
1023 A. Yes, sir.
Q. How did you happen to wake up Henry Padgett?
A. I happened to see Padgett there. I knew him; I was well acquainted with him.
Q. Was he not sitting up watching the game that Chambers and some other man were playing?
A. He was sitting over kind of like this [indicating], with his eyes shut.
Q. Wasn't he there piling up the pool balls, and arranging the table for them?
A. No, sir; not when I went in.
Q. Did you not see him wide awake, and taking an interest in the game?
A. No, sir; he was asleep.
Q. He was asleep?
A. He was sitting this way [indicating], with his eyes shut.
Q. He was not watching the game and taking an interest in it, and fixing the balls for them when you got there, and arranging the table? That is not correct, as you recollect it?
A. No, sir.
Q. How long did you stay there?
A. I don't know just how long I did stay. It was something like 10 o'clock when I left.
Q. It was something like 10 o'clock when you left?
A. Something after 10.
1024 Q. Were there some fellows that stayed around and tried to get a drink in the hall?
A. Me and Mr. Padgett tried to get some whiskey, but we couldn't get none.
Q. After the place closed?
A. Yes, sir.

Q. Chambers was with you there, was he not?
A. I don't know who it was.
Q. McJunkin was with you?
A. I don't know.
Q. Bill Gray was with you?
A. I don't know.
Q. You were all trying to get a drink there, were you not?
A. Me and Padgett met these two fellows and Padgett said something to them.
Q. And you all tried to get a drink out in the hall?
A. Me and Padgett did. I wasn't with them other fellows, only Padgett said something to them.
Q. You did not get the drink?
A. No, sir.
Q. You stayed there about half an hour. Did it take that long to try to get that drink?
A. No, sir. We stopped, and didn't get no whiskey, and went home.
Q. Had you taken a drink before that?
A. No, sir.
Q. What were you and Padgett doing in between times? You got there at 9 o'clock, and that would be about half-past
1025 10 when you left?
A. I don't know what time.
Q. It was after the closing time. You did not have any trouble getting drinks before closing time. The drinks were there, and that is what the place was for—pool and drinks?
A. I suppose so. I never taken any myself.
Q. There was a barroom right with the pool-room, was there not?
A. I went through, and walked right back in the pool room.
Q. Can you tell me whether there was a bar-room there or not?
A. I cannot.
Q. Is it not a well known place—the Stag saloon? They sell beer and whiskey there?
A. I am not sure.
Q. You do not know whether they sell beer and whiskey there or not?
A. I never drank none there.
Q. What did you go there for?
A. To watch them play pool.
Q. And you never thought of wanting a drink until after it closed?
A. No, sir.
Q. After 10 o'clock you got powerful thirsty, and you could not get a drink?
A. After 10 o'clock me and Padgett walked out, and we couldn't get a drink.
1026 Q. You do not know whether there was a bar there, where you could have gotten a drink before ten o'clock, or not?
A. I don't remember. We walked through and went back in the pool room.

Q. How long was it since you had been there before?
A. I can't remember that I had ever been.
Q. Do you go there very often?
A. No, sir.
Q. How did you happen to know they played pool there?
A. The boys all told me they played pool, and I guess I had been there a time or two.
Q. Did they ever tell you you could get drinks there?
A. No, sir.
Q. But you knew it was a pool room, and you wanted to see some pool playing?
A. Yes.
Q. Have you ever been there since?
A. Not that I remember.
Q. Did you play pool yourself that night?
A. No, sir.
Q. When is the first time Henry Padgett talked to you about this thing after it occurred?
A. I don't remember.
Q. Has he ever talked to you about it?
A. Yes, sir.
Q. Has he asked you if you remembered waking him up, and his being in there that night?
A. He asked me once.
1027 Q. When was it he asked you that?
A. I don't remember just when.
Q. Was it after this suit was brought?
A. I think so; I don't remember.
Q. Have you talked about it at other times?
A. I don't remember ever talking about it.
Q. You do not remember?
A. I don't remember.
Q. Have you ever seen him in there other times you have been in there? Have you been in there since that time?
A. Not that I remember.
Q. How many men do you remember seeing in there that night?
A. I don't remember. I didn't know none of them. There was a good many in there, but I didn't know any but Padgett.
Q. Did you and Padgett stay together?
A. No, sir; I went over and sat down across from Padgett.
Q. What did he do?
A. I don't know. I wasn't watching Padgett.
Q. All you know is that when you went in somewhere along about 9 o'clock he was there, and you left together, somewhere after 10 o'clock?
A. Yes, sir.
Q. Whether he played pool himself or fixed the balls for somebody else, you do not know.

A. He was asleep when I went in. He wasn't fixing
1028 balls then.

Q. What he did after that you do not know, until you left?

A. No, sir.

Q. You were not his guardian that night; you were not taking care of him?

A. He wasn't fixing balls or nothing, when I went in, as I told you a while ago.

Q. When you went there did you know beforehand that Padgett was there?

A. I did not.

Q. How long have you been living here?

A. 18 years.

Q. Have you ever gotten into trouble of any sort here?

A. No, sir. I have never been arrested in Chattanooga but one time, I believe.

Q. You have had one trouble then. What was that?

A. They had me for being in a sporting house.

Q. They had a warrant for you?

A. No, sir; they came in a sporting house and arrested four of us.

Q. Have you ever been in any other trouble, and have you been arrested——

A. No, sir.

Q. Anywhere else?

A. No, sir.

Q. How long ago is that, when you were arrested?

A. I can't remember how long ago it has been now.

1029 Q. Have you ever been indicted?

A. No, sir.

EWING WHITE, a witness produced on behalf of the defendant Henry Padgett, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Where do you live?

A. 113 E. 8th.

Q. How long have you lived here?

A. About 16 years, I believe.

Q. Are you acquainted with a witness, J. N. Stonecipher, who has heretofore testified in this case?

A. Yes, sir.

Q. Are you acquainted with his general reputation in this community?

A. I think I am.

Q. Is it good or bad?

A. Bad.

Q. From that would you give him faith and credit on his oath in a court of justice?

A. I would not.

Cross-examination by Mr. SANFORD:

Q. How long have you known Mr. Stonecipher?

1030 A. About fifteen years, I think, to the best of my knowledge.

Q. Where did you know him?

A. I have known him in Chattanooga.

Q. Has he been living in Chattanooga that long?

A. I don't know as he has been living here that long. He has lived at Cohutta, and several places around here.

Q. Did you live in Cohutta? You have been living here all the time, have you not?

A. I have been here since 1889, I believe.

Q. How much time has he been here since you have been here?

A. I couldn't tell you. I have seen him here almost ever since I have been here.

Q. What is your business?

A. Contractor and builder.

Q. Did you ever have any trouble with Stonecipher?

A. Nothing, only I sued him for a small account.

Q. I did not ask you that. I asked you whether you ever had any trouble.

A. No, sir.

Q. Did you ever have any lawsuits with him?

A. Nothing, only I sued him once for a small amount, $20.

Q. You did have a lawsuit with him?

A. That is all.

Q. You did have a lawsuit with him?

A. Yes, sir.

1031 Q. Have you ever gotten in any trouble here yourself?

A. No, sir.

Q. Have you ever been arrested for anything?

A. No, sir.

Q. Were you the financial secretary of the carpenters' union here at one time?

A. Yes, sir.

Q. Did you ever have any trouble in reference to that, of any character?

A. No, sir.

Q. You never did?

A. No, sir.

Q. You have never been arrested for anything, have you?

A. No, sir.

Q. Did you ever have any row with Stonecipher besides this one?

A. I never had any row with him at all.

Q. You had this lawsuit?

A. Yes, sir; simply this account, for collection.

Q. I did not ask you that. You had a lawsuit with him?

A. Yes, sir; that is all it was.

Q. How often do you see Stonecipher?

A. Very near every day.

Q. Are you competitors in business? You bid on contracts against each other?

A. No, sir; I don't bid against him.

1032 Q. You are in the same business he is in?

A. Yes, sir.

Mr. SANFORD. Take the witness. I may want to recall the witness for further cross-examination.

Mr. SHEPHERD. He will be right here in the city, and we can get him. If it is the pleasure of the commissioner, we will adjourn until after dinner.

The COMMISSIONER. We will take a recess now until 2 o'clock.

(A recess was thereupon, at 12.30 p. m., taken until 2 o'clock p. m.)

1033 AFTER RECESS.

MATTHEW FRANKLIN PITNER, a witness produced on behalf of the defendant, Henry Padgett, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Where do you reside, Mr. Pitner?

A. In Chattanooga.

Q. I will ask you if you are connected with the wholesale firm of Peeples & Pitner Bros.?

A. Yes, sir.

Q. You are one of the members of that firm?

A. One of the members; yes, sir.

Q. Did you formerly live in the neighborhood of Cohutta, Georgia?

A. Yes, sir; I was raised within three miles of Cohutta.

Q. I will ask you to state if you are acquainted with the general reputation of John N. Stonecipher among his neighbors and friends around Cohutta, Georgia? His reputation is what people say about him.

A. You want to know what I have heard?

Q. Yes. Are you acquainted, from what you have heard, with his general reputation? Answer yes or no.

A. Well, I have heard a good deal of him.

Q. You do not know him personally, I believe?

A. No, sir. It has been 20 years since I have seen him.

1034 Mr. PENLAND. Did he qualify, judge?

Mr. SHEPHERD. I think so.

By Mr. SHEPHERD:

Q. Did you not say that you were acquainted with what his neighbors in that section of the country say about him?

A. Yes, sir; I know what they say about him.

By Mr. SANFORD:

Q. How long ago was that?

A. Last year or the year before. I left there the first of this year.

Mr. SANFORD. We note an objection to this testimony on the ground that the witness has not qualified properly as a witness on reputation.

The COMMISSIONER. Note the objection.

By Mr. SHEPHERD:

Q. State whether or not the reputation which he bears amongst the people in the neighborhood of Cohutta, Georgia, is good or bad.

A. Well, sir, it is bad.

Q. From that reputation is he entitled to faith and credit on his oath in a court of justice?

A. I should not think so.

Cross-examination by Mr. SANFORD:

Q. How long has it been since you lived in Cohutta?

A. I left there the 17th day of January.

Q. How long has it been since Mr. Stonecipher lived there?

1035 A. I don't know, sir. I haven't seen Mr. Stonecipher for more than 20 years.

Q. You do not know when he left there?

A. No, sir.

Q. Has he ever been there when you lived there?

A. His father lived within five miles of where I was raised.

Q. How far does he live from where you do?

A. Now? I don't know where he lives now.

Q. How far did he live from you when you last knew him?

A. Why, it is 105 miles.

Q. How large a place is Cohutta?

A. It is a small place; about two to three hundred people.

Q. Did you live in the country?

A. Yes, sir; I lived three miles from Cohutta, in the country.

Q. What mutual associates did you have? Did you know the same people that he did; did you have the same friends?

A. Well, yes. I was well acquainted with everybody around there.

Q. As a matter of fact, has not Mr. Stonecipher been living in Chattanooga for the last 10 or 15 years, and is it not a fact that he has not had transactions in Cohutta at all for that length of time?

A. I don't know. Just as I said a while ago, I haven't seen the man for 20 years.

Q. Have you heard anybody talk about any transactions

1036 with him for the last 10 or 15 years? Have you heard what he has been doing?

A. I have heard he is a mechanic. I don't know how true it is, though.

Q. And you have heard that he went away from there and came to Chattanooga and went into business up here?

A. When he left there he went West, I think.

Q. You do not know what he has been doing or what reputation he has made in the community since he left Cohutta, do you?

A. No, sir.

Mr. SANFORD. I further object to the testimony of this witness on the ground that it is too remote from the present time to be competent on the question of his present reputation.

By Mr. SANFORD:

Q. Did you ever have any row with him personally?
A. No, sir.
Q. You never did?
A. No, sir.
Q. Did you ever have any lawsuit with him?
A. No, sir.
Q. Or with any of his family?
A. No, sir.
Q. Have you ever had a lawsuit with his father?
A. No; I never had a lawsuit with any of them.
Q. With any of them?
A. No, sir; no lawsuit at all.

Q. You live here in Chattanooga now?
1037 A. Yes, sir.
Q. What is your business?
A. Wholesale tobacco business.
Q. Has not the most of the talk you have heard about Stonecipher been since this lawsuit came up, and since he was a witness in this case?
A. No, sir; I have heard a good deal of talk before.

Redirect examination by Mr. SHEPHERD:

Q. Was Stonecipher ever connected in any way with the post-office at Dalton?
A. His father was postmaster over there, and I don't know whether he was the assistant or not.

Mr. SHEPHERD. I will now examine the defendant Henry Padgett.

HENRY PADGETT, a witness produced on his own behalf, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Mr. Padgett, are you the Henry Padgett who is a defendant in this case?
A. Yes, sir.

Q. I will ask you to state whether, on the afternoon before
1038 Johnson was lynched, you met the witness John N. Stonecipher and had any conversation with him about the Johnson case?
A. I did not.
Q. I will ask you to state if you told him or said in his hearing that the Government of the United States had taken hold of this case.
A. No, sir.
Q. And that they ought to let your business alone?

A. No, sir.

Q. Did you have any conversation of that tenor and effect with Stonecipher?

A. No, sir.

Q. I will ask you to state whether or not you had any conversation with Stonecipher, or in the hearing of Stonecipher, the morning after the lynching of Ed Johnson, with regard to getting white mud on your shoes when you were lynching the nigger the night before?

A. I never had no conversation with him about lynching the nigger the night before. My shoes was muddy, but I don't remember of talking with him that morning.

Q. Prior to that time did you know the defendant Alfred Handman?

A. No, sir.

Q. You had no acquaintance with him at all?

A. I never knew Alfred Handman until after he was accused of being in this lynching.

Q. How did you come to know who Alfred Handman was?

A. By him being one of the defendants in this case.

Q. By seeing him amongst the other defendants in the
1039 case?

A. Yes, sir.

Q. I will ask you to state whether or not you had any conversation with Alfred Handman the morning after the lynching of Johnson, in which you said to him, in substance: "We did that nigger up all right last night."

A. No, sir; I never had no conversation with no one to that effect.

Q. Did Alf Handman ever say anything to you about having cleaned off his shoes before you saw him on the next morning?

A. No, sir.

Q. Where were you on the afternoon of the day that Johnson was lynched?

A. On that afternoon I was at Turner Hall.

Q. What time did you go to Turner Hall?

A. I went there about between 11 and 12 o'clock, the best that I remember.

Q. With whom did you go at that time?

A. Will Mays.

Q. How long did you stay at Turner Hall?

A. I stayed there until near about dark.

Q. When you left there where did you go?

A. I went down to the Stag Hotel saloon and pool room.

Q. What time did you arrive at the Stag Hotel pool room?

A. Well, it taken, I guess, about 5 or 10 minutes to walk down; just as soon as I could walk straight on down; about six o'clock, I guess.

1040 Q. How long did you stay there?

A. I stayed there until after the saloon closed up.

Q. What time did the saloon close?

A. It closed at 10 o'clock, the usual closing hour.

Q. That was in pursuance of an ordinance of this city about closing saloons, was it not?

A. Yes, sir.

Q. What were you doing all this time that you were at the Stag Hotel?

A. I was just in the saloon there and in the pool room. Part of the time I was around where the boys was playing pool; part of the time I was sitting down in a chair.

Q. When you were around where the boys were playing pool, what were you doing?

A. When one of the boys shot, you know, and made a ball, I would take that ball and put it up in his rack for him.

Q. You say part of the time you were sitting. Where were you sitting?

A. I would sit down in the chairs. They had a long row of chairs along on one side for the people that wants to look on to sit in. I would sit in them.

Q. Whom did you see there that night while you were there, that you recognized and afterward remembered?

A. I seen Will Gray, Tom Duckworth, Clint Chambers, Dave McJunkin, the bartender, and Al Stanley, and that fellow there that keeps the game; I know his name, but I can't recall it just now. I seen quite a number, but I don't know whether I remember who they were or not.

1041 Q. I will ask you to state whether or not, from the time you went there until you left after the closing hour, you were out of the building at all.

A. No, sir; I wasn't out of the building at all.

Q. When you left the building, with whom did you leave?

A. I left with Tom Duckworth.

Q. State whether or not you saw these other men that you mentioned, Gray and the others.

A. Yes, sir; they was there too.

Q. Where were they?

A. They was down there—you mean when we left?

Q. Yes.

A. They was down there trying to get in to get a drink. The saloon was done closed up.

Q. When you and Duckworth passed them, did you say anything to them or they to you?

A. I believe I said that it was too late to get a drink now.

Q. Then where did you go, Mr. Padgett?

A. I went home.

Q. Tell us the route of travel.

A. I went out that little alleyway to 9th street, up 9th street to Georgia avenue, up Georgia avenue to McCallie avenue, and there I

taken the car. I went from there out to Douglas street and got off at Douglas street and walked straight on home.

Q. State whether or not you took the Oak street car that goes to Ridgedale.

1042 A. Yes, sir; I took the Oak street car.

Q. I will ask you to state whether or not you were about the jail of Hamilton County that night.

A. No, sir.

Q. Did you know anything about a lynching going on there?

A. No, sir.

Q. I will ask you if you had previously heard that there was going to be a lynching, or had any apprehension that Johnson was to be lynched there that night?

A. No, sir.

Q. You went straight home by way of the street car?

A. Yes, sir.

Q. I will ask you to state whether or not you were at or about the county bridge on that night?

A. No, sir; I was not there that night nor the next day.

Q. Were you on any part of Walnut street between the jail and the bridge where the hanging occurred?

A. No, sir; not between the jail and the bridge. Now, Georgia avenue—you know Walnut street connects into Georgia avenue.

Q. That is, the end of Walnut street where it joins Georgia avenue?

A. Yes, sir.

Q. But that is some distance this side of the bridge?

A. About two blocks.

Q. When you went home, state where you stayed the balance of the night.

1043 A. I went home and went to bed.

Q. When were you next back in the city?

A. Next morning.

Q. Mr. Padgett, when did you first hear that Johnson had been lynched?

A. When I got down to Turner's Hall next morning.

Q. Was that the first information you had on the subject?

A. Yes, sir.

Q. I will ask you to state whether or not you aided, abetted, or encouraged the lynching of Johnson in any way?

A. I didn't know anything about it. I had nothing to do with it at all.

Cross-examination by Mr. SANFORD:

Q. What is this Turner Hall that you speak of?

A. That is a saloon on Cherry street.

Q. You went there about 11 o'clock Monday morning?

A. I went there about 11 o'clock the morning before Johnson was lynched that night. I don't know whether it was Monday or not.

Q. Whom did you go there with?

A. With Will Mays.
Q. Is he an old friend of yours?
A. Yes, sir.
Q. How long had you known him?
A. I have known him, I expect, some ten or twelve years.
1044 Q. How many drinks did you take at that saloon?
A. I don't know.
Q. What is your best recollection?
A. I guess I took about five or six.
Q. Beer or whiskey?
A. Beer.
Q. Did you take any whiskey?
A. I didn't.
Q. Did he?
A. I couldn't remember whether he did or not. He might and he might not.
Q. Did he drink beer with you?
A. Yes, sir.
Q. How long did you stay there?
A. I stayed there until it begun to get dark.
Q. Where did you get your lunch?
A. In there.
Q. And took your drinks. You stayed there until about dark?
A. Yes, sir.
Q. Did you see John Varnell?
A. No, I don't remember seeing John.
Q. You did see John Varnell that afternoon, did you not, or that evening?
A. Not that I remember of. There was a whole lot of people come in there. He might have been in there. I wouldn't say positive, because you couldn't tell, you know, that long.
Q. Did John Varnell tell you anything that afternoon
1045 about anything that was going to take place that night?
A. He did not.
Q. Did you meet him that afternoon?
A. If I did I don't remember it.
Q. How long have you known John Varnell?
A. I have known John Varnell for three or four years, probably longer.
Q. What is your best recollection about meeting him that afternoon?
A. I have none.
Q. Did you not meet him somewhere that afternoon?
A. If I did I don't remember it.
Q. Where did you go after you left this saloon?
A. I went down to the Stag Hotel.
Q. That was a hotel and a saloon. Did you get your supper down there?
A. No, I don't believe I ate any supper.

Q. Did you take any more drinks down there?
A. I think I had two or three glasses of beer.
Q. How often did you go to that Stag saloon?
A. Well, I go there frequently.
Q. You generally go there on Saturday night, do you not?
A. Well, some Saturday nights I do and some I don't.
Q. Is it not a fact that you get off Saturday night and go down town more than you do in the middle of the week, as a rule?
A. Oh, yes, sir.

Q. All the boys do that go around that way; Saturday
1046 night is the general night for that sort of thing, it it not?

A. That is, the boys that work like I do.
Q. That is the night off?
A. Yes, sir; they get their money, you know. They never have any money until Saturday.
Q. Saturday night is the usual night for that sort of thing?
A. Yes; they go to town and get a glass of beer, get shaved, and buy a little something.
Q. How did you happen to go there Monday night at this time?
A. Well, sir, I couldn't tell you how I happened to.
Q. What did you do Saturday night? Did you get your money the Saturday night before?
A. Yes, sir.
Q. Where did you go to have a good time that night?
A. The Saturday night before, I don't remember.
Q. You do not remember who you were with?
A. No, I don't.
Q. Did you go to this same saloon that night?
A. I might.
Q. But you do not remember?
A. No, sir; I don't. There was nothing happened, you know, that would call my attention to it; nothing out of the way.
Q. There was nothing happened out of the way that night at the Stag saloon to call your attention, was there?

A. No, sir; not that night.

1047 Q. It was a very usual thing for you to go there and meet fellows there, was it not?

A. Yes, sir.
Q. And nothing happened there that night any different from any ordinary night?
A. No, nothing different from any ordinary night.
Q. But you remember what happened that night and you do not remember what happened Saturday night?
A. No, sir; but the reason why I remember that was this here lynching in the paper next morning, and a man would naturally think where he was the night before.
Q. Did the paper say you had been in the lynching?
A. No, sir.
Q. Did anybody accuse you of that at that time?

A. No, sir.

Q. You were not accused of it until over two months after that time, were you?

A. The first I remember was reading it in the paper.

Q. It was after this suit was brought, was it not?

A. Yes, I guess it was.

Q. None of the names were mentioned, yours or any of the other defendants', until after this suit was brought?

A. Not that I know of.

Q. When did you see these other men after that? Did you talk this thing over with them—these men that have been witnesses here?

A. I told part of them; yes, sir.

Q. You have been sitting here while they have been testifying?

1048 A. Yes, sir.

Q. Have you talked this matter over with them?

A. Part of them.

Q. Did you ask them if they recollected being there with you that night?

A. Yes, sir.

Q. Which of them have you talked it over with?

A. I talked it over with Duckworth and I talked it over with McJunkin, if I remember right.

Q. And with Chambers?

A. I think I talked it over with Chambers.

Q. Did you talk it over with Will Gray?

A. I don't think I did. McJunkin and Will was together and he told me——

Q. I am not asking what he told you. I just asked you if you talked it over with them. You have talked it over with all of them except Gray, you think?

A. Yes, sir.

Q. How many drinks did you take that night, if you can tell us?

A. About five or six.

Q. About five or six drinks?

A. To the best of my knowledge.

Q. Were you playing pool there?

A. No, sir.

Q. You were not playing pool?

A. No; I can't play pool.

Q. You just sat there until after 10 o'clock?

A. There and in the saloon.

1049 Q. You just sat there. You did not take any part in any game yourself?

A. Nothing more than put up the balls for the other boys.

Q. You knew some of the other men that were there that night, did you not?

A. I knew these four.

Q. You don't remember any but these four?

A. The bartender and the other people, and the man that owned the saloon.

Q. Do you remember seeing the bartender, or do you just know the bartender was there?

A. I remember seeing the bartender.

Q. You do not know his name?

A. His name is Gus, and the other name is John.

Q. Which one did you talk to?

A. I couldn't say that I talked to either of them.

Q. Do you remember seeing anybody else there that night?

A. Well, I seen quite a crowd there, but I don't recognize any one's name.

Q. What are the full names of those bartenders?

A. I don't know. John and Gus is all I know.

Q. You do not know their last names?

A. No, sir.

Q. How often do you go to that place?

A. Well, it is owing to what I am doing. When I am working I might make an afternoon there twice a month. If I ain't doing anything I may go there every day for a week.

1050 Q. You go there pretty often, as a matter of fact?

A. Oh, yes.

Q. Are you a married man?

A. Yes, sir.

Q. Have you any grown children?

A. I have one married.

Q. Living at home?

A. The one that is married?

Q. Yes.

A. No; she is living at home with her husband.

Q. I mean at your home?

A. No; she is not living at my home.

Q. Have you ever been in any trouble of any kind, Mr. Padgett, in the courts?

A. Yes, sir.

Q. Have you ever been indicted for anything?

A. Yes, sir.

Q. What have you been indicted for?

A. Well, I have been indicted for murder.

Q. You did kill a man, did you?

A. Yes, sir.

Q. Have you ever been indicted for anything else?

A. Not in the Circuit Court.

Q. In any other court?

A. I have been up before this here police court.

Q. How many times have you been up in the police court?

A. I expect I have been up about a dozen times.

1051 Q. What for?

A. Drunk and disorderly.

Q. About a dozen times?
A. Yes, sir.
Q. You were in town the next morning after this lynching, were you?
A. Yes, sir.
Q. And you were around Ransom's saloon, were you not?
A. I was there at the Stag saloon.
Q. At the Stag saloon. And you saw Stonecipher?
A. I think I did.
Q. Who was with you?
A. There was no one in company with me.
Q. You went in by yourself?
A. I mean by that I never had no one going along with me; that is, you know, like you and I would go out together—like two boys would start out to have a time like that.
Q. You did not have any of the boys with you that time?
A. No, sir.
Q. You just went in to have a time by yourself, did you?
A. Yes; I just met up with them, you know.
Q. What boys did you meet when you got in there?
A. I don't remember seeing no one in there except that fellow Dobbs, Tom Dobbs. I remember seeing him that morning.
Q. He is the man that has been a witness here?
1052 A. Yes, sir. He and I had a drink together.
Q. That was the next morning?
A. That was the next morning after the lynching the night before.
Q. How far do you live from William Mays?
A. I live on Lansing street and he lived then across over here on Pine street, I believe it is. Anyhow, it is the west side of Market street; three or four streets up there.
Q. How far did you live from St. Elmo?
A. I suppose about 3 miles or 4.

Redirect examination by Mr. SHEPHERD:

Q. Mr. Padgett, you say you were indicted for murder. That was in the Circuit Court of Hamilton County, Tennessee, was it not?
A. Yes, sir.
Q. What became of that case?
A. Why, they tried it up there, and I come clear.
Q. You were acquitted on the ground that the other man was trying to kill you and you killed him in self-defense?
Mr. SANFORD. I object to going into the details of the case. I object to the testimony as incompetent.

By Mr. SHEPHERD:

Q. Mr. Padgett, you say that you did not talk to your witness, Mr. Gray, about what he would swear before he was introduced as a witness. If there was any reason why you did not speak to Mr. Gray about it, please state what that was.

1053 Mr. SANFORD. I object to evidence as to his reasons for not talking to Mr. Gray.

By Mr. SHEPHERD:

Q. If there was any reason why you did not talk to Mr. Gray about it, state what it was.

A. Well, the reason why I didn't talk to Mr. Gray about it was because I was with him there that night, and this fellow McJunkin had talked to him and he told me.

Q. You got Mr. McJunkin to talk to him for you?

A. Yes, sir.

Q. And Mr. McJunkin reported the result to you?

A. Yes, sir.

Mr. SANFORD. I object to this evidence as incompetent and inadmissible.

The COMMISSIONER. Not the objection.

1054 Mr. SHEPHERD. Now we close the Padgett case. I will ask the commissioner and the Attorney-General, when Mr. Pritchard comes in, to allow me to examine him about the Nick Nolan case, and I also want to examine Joe Richardson in the Bart Justice case, and then I will be through.

The COMMISSIONER. Are there any more witnesses for the defense?

Mr. SHEPHERD. I will yield the floor to some other gentleman.

Mr. FLEMING. I will notify Mr. Pritchard.

Mr. HOOD. I represent Frank Ward, but there are some of our witnesses that we could not get here to-day, and I did not assume there would be enough to go on with.

Mr. SANFORD. Can you get some of them, so as to start in this afternoon?

Mr. HOOD. I don't think I could. I understood that Mr. Chamlee had some more.

Mr. CHAMLEE. I have a man here, but I want to have a little conference with Capt. Shipp's attorney before we commence.

Mr. SANFORD. That is all right. Then what other witnesses will there be except for Captain Shipp and the deputies?

Mr. STANFIELD. I represent Mr. Brown. We had a conference and decided to set my people for Thursday.

Mr. SANFORD. We probably will have nothing to do to-morrow.

Mr. HOOD. I will be ready for my client.

1055 Mr. SANFORD. You will not take nearly all day, will you?

Mr. HOOD. No.

Mr. SANFORD. I will tell you my situation, gentlemen. I am very anxious to get to Cambridge by the 26th. It is Commencement Day there and I have an appointment, and I am very anxious to get there. In order to do that I would have to leave here, of course, by Saturday night. I am going to stay here, of course, until this is through; but if the case could be expedited it would be a great personal accommodation to me.

Mr. STANFIELD. We will endeavor to have our witnesses here Thursday.

The COMMISSIONER. Could you get them here to-morrow afternoon?

Mr. STANFIELD. I might possibly, sir; but I have notified most of them to be here Thursday. They have made their arrangements to be here on that day. I might do that, and I will if I can.

Mr. PRITCHARD. What day is it want to get away, Mr. Sanford?

Mr. SANFORD. I will have to be there on Tuesday. I had another appointment for the 22d, which I have given up, of course.

Mr. PRITCHARD. I have an idea that it will take a good deal longer to get through with the testimony on behalf of Captain Shipp and the deputies than has been figured upon; and I do not believe that if we were to go right along we would likely finish before the latter part of next week.

1056 Mr. SANFORD. Of course if we do not get through I will stay; that is all.

Mr. PRITCHARD. What I wanted to sugggest was this: I do not believe that we are ready to proceed to a finish now, and I believe time will be saved by taking an adjournment to a later day. I do not want to do that to the inconvenience of anybody, of course; but I believe (without having conferred with my associates) that that would be the best thing and the most time-saving thing we could do.

Mr. SANFORD. The others will all be through by Thursday, as I understand it.

Mr. PRITCHARD. We are going to be in this condition also. Our circuit court meets again Monday. It adjourned largely for this hearing, I suppose entirely for this hearing, and a number of counsel who are in this case are also interested in cases coming before the circuit court. The court will resume Monday and will hold Monday, Tuesday, Wednesday, and Thursday of next week, and I do not see very well how we will be able to get along. Before any definite action is taken I want to talk with these gentlemen.

Mr. Commissioner, how will that be with you?

The COMMISSIONER. I will be seriously inconvenienced if I stay over next week. I have a great deal of work to be done which I have left unfinished to come down here to this hearing. We have four full days this week.

Mr. PRITCHARD. We will talk it over and see if we cannot agree upon something that will be convenient.

Mr. SANFORD. How long do you think your proof will take, Mr. Pritchard?

1057 Mr. PRITCHARD. As I stated a while ago, my idea is that it will take a good deal longer than we have counted upon.

Mr. SANFORD. Do you think it will take a week, holding two sessions a day?

Mr. PRITCHARD. Yes; possibly longer than that. We will try to get our witnesses here so as to go right on, but of course you cannot count on that. We will do all we can to go right along.

The COMMISSIONER. I hope the hearing will be expedited as much as possible. I am very willing to accommodate everybody in this matter; still there are duties that I must attend to elsewhere, and I would like to get back as soon as possible.

Mr. LYNCH. Would it suit the Commissioner to come back in a week?

The COMMISSIONER. I will not leave here this time until the hearing is finished; and I do hope that counsel will expedite it as much as possible. I am willing to meet just as early in the morning and sit just as late in the evening as counsel may desire.

(Counsel thereupon retired for a private conference.

1058 At the termination of the conference the following occurred:)

Mr. LYNCH. I think we are ready to announce for several of the defendants when they will be ready to go on. We will try to agree on a particular time for each man; and I think counsel will be able to announce what days they will be ready to take up their cases, so that we will be able to fill up all the time right along.

Mr. CHAMLEE. We will be ready to proceed with the cases of Frank Ward and Frank Jones.

Mr. SANFORD. How many witnesses will you probably have?

Mr. CHAMLEE. We will get through by noon to-morrow.

Mr. LYNCH. Mr. Stanfield, will you be ready to take up the Brown case at noon?

Mr. STANFIELD. I will do my best. If I can get ready I will.

Mr. PRITCHARD. How many witnesses have you?

Mr. STANFIELD. I think about twenty.

Mr. LYNCH. That will take to-morrow afternoon and Thursday?

Mr. STANFIELD. It will take about a day, I think.

Mr. LYNCH. I would like to take up the case of Joe Clark Friday morning. I will be ready, and will have them all here. You can be here then, Mr. Clark?

Mr. CLARK. Yes, sir.

Mr. SANFORD. What do you think about the case of Captain

1059 Shipp, and the deputies. Have you reached any conclusion about that?

Mr. PRITCHARD. I will take it up as soon as I can.

Mr. SANFORD. Have you any idea now, when you can take it up?

Mr. PRITCHARD. I think we will be ready by the time they get through.

Mr. SANFORD. Do you think it is going to take more than the rest of the week?

Mr. PRITCHARD. There would not be but one day left, and that is Saturday.

Mr. SANFORD. They will not take all day Friday; that will leave the balance of Friday and Saturday.

Mr. PRITCHARD. It will take that long and longer.

Mr. SANFORD. How much longer, do you think?

Mr. PRITCHARD. I will promise not to take one second longer than I can; but I cannot tell how many days it will take. I will hurry the thing up as much as possible.

Mr. SANFORD. I appreciate that.

Mr. PRITCHARD. The thing is hanging heavily on me, and I want to get through with it.

Mr. SANFORD. I appreciate the situation.

Mr. PRITCHARD. There is one thing we have got to remember. That is, we have got to see Judge Allison first, you know, about his court. If Judge Allison goes on with his court, I cannot be here, of course.

Mr. CLIFT. He adjourned his court two weeks for us.

The COMMISSIONER. If there are no more witnesses for this afternoon, we will adjourn until to-morrow morning at 9 o'clock.

1060 (Thereupon, at 3 o'clock p. m., the hearing was adjourned until Wednesday, June 19, 1907, at 9 o'clock a. m.)

1061 CHATTANOOGA, TENNESSEE,
June 19, 1907.

The hearing was resumed at 9 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland, and counsel for the various defendants.

Testimony on behalf of the defendant Frank Ward.

Mr. HOOD. I have here an agreement with Mr. Sanford, which I would like to have go on the record. It is:

In order to save time it is agreed by the attorneys for the Government and the attorneys for the defendant Frank Ward, that the depositions taken in behalf of the other defendants in this case tending to impeach the character of J. N. Stonecipher, a witness for the Government in this case, may be relied upon and read on behalf of the defendant Frank Ward, and filed in his case, with the understanding that the attorneys for the Government may have the privilege of recalling any of said witnesses for further cross-examination if they so desire.

Mr. SANFORD. That is all right.

W. P. BARNES, a witness produced on behalf of the defendant
1062 Frank Ward, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. HOOD:

Q. What is your name?
A. W. P. Barnes.
Q. Where do you live?
A. No. 10 Hotel street.
Q. What business are you in?
A. I am in the saloon business.

Q. Where is you place of business?
A. 1057 Market street.
Q. How long have you been in business there?
A. About thirteen years.
Q. How long have you lived in Chattanooga?
A. Twenty years.
Q. Are you still in business now at the same place?
A. Yes, sir.
Q. Do you know Frank Ward, one of the defendants in this case?
A. Yes, sir.
Q. How long have you known him?
A. About three years.
Q. Do you remember the time of the lynching of Ed. Johnson?
A. Yes, sir.
Q. Where did Ma. Ward live at that time?
A. He lived upstairs, at 1057½ Market street, over my place of business.

1063 Q. Is that near your place of business?
A. It is upstairs, over my place of business.
Q. Where were you on the night of the lynching of Ed. Johnson?
A. I was at my place of business.
Q. What hours were you there?
A. I was there from 7 up until 11.
Q. Did you see Frank Ward on that night?
A. Yes, sir.
Q. Where, and at what time did you see him?
Q. Why, he was in and out there several times during the night.
Q. How much of the time from 7 until 11 was he in and about your saloon?
A. I suppose he was in and out about half a dozen times.
Q. Do you remember any incidents that fix it in your mind that he was there that night?
A. Yes, sir; he was drinking. He was on a drunk—a spree. He was in and out around my place. When I got ready to go—I locked up at 10 o'clock—I had some other business to fix up, and I left there at 11 o'clock. When I went out, he was out in the rear in a chair. I slipped him inside the stairway and pulled the door to, and that locked. He could go upstairs to where he lived, but he couldn't go anywhere else.
Q. Do you know where he was about your closing hour—about that time?
A. He was out on the street.

1064 Q. When you closed your saloon?
A. Yes, sir; he was out there asleep.
Q. That was at 10 o'clock?
A. Yes, sir.
Q. There is an ordinance of the city requiring saloons to be closed, then?
A. Yes, sir; promptly at 10 o'clock.

Q. Did you see him at that hour?

A. When I locked the door; yes, sir. He was out in the street asleep. He wasn't asleep when I closed, but he was when I went away.

Q. How did it come that you closed your saloon at 10 and did not leave until nearly 11?

A. I close at 10 o'clock every night. I have to do it. I stayed there for the purpose of arranging matters and straightening up matters for the next day.

Q. So you say it was near or about 11 when you left?

A. Yes, sir; it was very near 11 when I left there.

Q. And he was there at that time?

A. He had then gone to sleep out there in the rear at that time.

Q. I will ask you to state if you heard the next morning about the lynching the night before.

A. The first I heard was the newspaper report; yes, sir.

Q. What is it that fixes it in your mind that this was the particular night?

A. After I read of the excitement in the newspaper, and
1065 heard the talk on the street, I very clearly remembered about putting Frank in there that particular night, next morning.

Q. Did you see him, you say, about 7 o'clock?

A. Yes, sir; he was in and out from 7 up until 10. He would come in and then go out again.

Q. Are you positive he was there on that night?

A. Yes, sir.

Q. From about 7 up until 11?

A. Yes, sir; he was around there. I didn't see him all the time, but he was in and out there from 7 up to 11—up to 10. After 10 he couldn't come in any more.

Cross-examination by Mr. SANFORD:

Q. How long have you been in the saloon business?

A. I have been in the saloon business about 18 or 19 years.

Q. Are you a bartender?

A. No, sir; I own the place.

Q. Have you ever been a bartender?

A. Yes, sir; I have worked at it.

Q. How many years were you a bartender?

A. Not very long.

Q. You just run the saloon now.

A. Yes, sir; I just run the business.

Q. Do you belong to any society with Mr. Ward?

A. No, sir.

Q. Or any club or order?

1066 A. No, sir.

Q. You say that the fact that you saw in the paper the next morning and heard that there had been a lynching, fixed the occurrences of the evening before on your mind?

A. Yes, sir; there was a good deal of talk on the street and in the newspaper, and both together made me clearly remember about what happened in the evening before.

Q. The newspaper did not say Ward was in it, did it?

A. No, sir; not at that time.

Q. There was nothing to call attention to him particularly?

A. No, sir.

Q. That was not until the latter part of May?

A. Not until later on.

Q. There was no newspaper publication accusing anybody or mentioning anybody's name in connection with this thing until the end of May?

A. I think not.

Q. What fixes your mind on the events of the previous evening? Who else was there?

A. Mr. Prince. He was there until about 8 o'clock.

Q. Who is he?

A. He works there. He was there until 8 o'clock.

Q. Is he one of the men that worked there?

A. He worked for me; yes, sir.

Q. He is there every evening?

A. Yes, sir.

Q. How do you remember he was there on that particular
1067 evening?

A. He was there every evening.

Q. How do you remember he was there that particular evening? How was that fixed on your mind?

A. He was there every evening, when he ain't sick.

Q. Do you just remember that he was always there?

A. I remember him usually being there.

Q. When did this man Prince come in that night?

A. He goes off at 8 o'clock. He had been there all day.

Q. What time in the morning did he come?

A. He comes about 5 o'clock.

Q. Was that fixed on your mind by the fact that there was a lynching that night?

A. No, sir.

Q. It did not fix that on your mind?

A. No, sir.

Q. Do you remember any conversation you had with Prince that night?

A. No, sir.

Q. It did not fix that on your mind?

A. No, sir.

Q. Did it fix on your mind the fact of any other person being there that night?

A. No, sir.

Q. It fixed on your mind that Ward was there, but it did not fix on your mind that anybody else was there, although you had not heard that Ward had anything to do with it?

1068 A. No, sir. Him being out there asleep, I clearly remember it.

Q. It did not fix on your mind that anybody else was there that evening?

A. No, sir.

Q. Or any conversation you had with anybody else that evening?

A. No, sir; no particular one.

Q. When did you first talk with Ward about this?

A. I didn't talk about this until after the newspapers——

Q. Did he come and talk to you?

A. He spoke about it several times.

Q. Did he ask if you remembered his being there?

A. He asked if I remembered his being there.

Q. Did he ask if you remembered his being drunk?

A. Yes, sir.

Q. He asked you all about it, and you said you did?

A. He asked me if I knew about his being there that night.

Q. How long had he been living over your place?

A. A year or more at that time.

Q. Is he a married man?

A. Yes, sir—he ain't there now.

Q. How often does he go on sprees?

A. Pretty often.

Q. Is it any unusual thing for Ward to be drunk about your saloon?

A. No, sir; he got on sprees pretty often.

Q. There was nothing about this particular spree to

1069 distinguish it from any other spree he was on?

A. No, sir.

Q. Can you remember the last spree he was on before this one; and what time of night he was there?

A. No, sir; he went away from my place. He ain't there any more.

Q. How long before this night had he been on another spree?

A. A couple of weeks.

Q. Can you tell what night it was?

A. No, sir.

Q. Can you tell what time he came in that other night?

A. No, sir.

Q. Can you tell what time he went out, or what you did to him?

A. No, sir; he was in and out all the time. He was this kind of a fellow. When he gets on sprees he goes everywhere.

Q. His behavior at this time was not at all different from what it was at any other time?

A. I think not.

Q. What time did you first see him there that night?

A. He was there all day, in and out that day.
Q. He was there all day?
A. He was in and out all day—several times.
Q. He was there several times that day?
A. Yes, sir.
Q. When did you first see him that morning?
1070 A. About 8 o'clock.
Q. About 8 o'clock?
A. Yes, sir.
Q. The fact that you saw in the paper the next day that there had been a lynching fixed in your mind that Ward had been in your place about 8 o'clock the morning before?
A. No, sir. It was fixed in my mind by locking him up.
Q. How often was he in your saloon the day of the lynching?
A. I couldn't say; perhaps half a dozen times.
Q. What time of day was it?
A. I couldn't say. It was all times of the day.
Q. Was he able to walk.
A. Yes; he walked around. He wasn't so full that day as he was that night.
Q. How many drinks did he take in your place that day?
A. I couldn't say. I wasn't there all day.
Q. You can not tell when you saw you, only you saw him several times?
A. He was in and out several times.
Q. When did you first see him after supper?
A. About 7 o'clock.
Q. Who came in with him?
A. Some fellow by the name of Waldus Bradley.
Q. That is not one of your men?
1071 A. Waldus Bradley run a restaurant—a very notable man. I remember him very well coming in with him.
Q. Did he run the restaurant next to you?
A. Yes, sir.
Q. In the same building?
A. No, sir; the next building.
Q. He came in with Frank Ward?
A. He came with him, about 7 o'clock. They went over to the restaurant.
Q. How often did you see Waldus Bradley?
A. I saw him every hour then.
Q. What was there to fix on your mind that it was on that particular evening about 7 o'clock when Waldus Bradley came in with Frank Ward?
A. I just remembered it because he came in usually with him. In the morning I am speaking about.
Q. Was Waldus Bradley in there with him any time Monday morning?
A. Several times.

Q. What other time was he in with him?
A. About a week before.
Q. What night?
A. I couldn't tell you.
Q. Can you tell what time he came in?
A. No, sir; I couldn't. They were in very often together.
Q. The fact is, they were in there often together. They did not do anything different that evening from what they did any other evening, did they?
1072 A. No, sir.
Q. And you can not tell any other evening they were in together except this one evening?
A. I couldn't fix the time; no, sir. They were in and out all the time. I couldn't fix it.
Q. When did you last talk to Waldrus Bradley about this thing?
A. I haven't seen him for some bit. He has gone away somewhere.
Q. How long did Frank Ward stay in there that first time that Monday night?
A. I didn't notice how long he stayed.
Q. Then he may have gone out, so far as you know?
A. He was out and in, as I told you.
Q. You do not remember seeing him until 10 o'clock?
A. I saw him once or twice between that. He didn't stay but a few minutes.
Q. About what time was it?
A. I couldn't say. I never paid particular attention to the time.
Q. You were busy?
A. Yes, sir; I wasn't thinking about the time.
Q. He was in once or twice?
A. In and out; yes, sir.
Q. Did anything particular occur to call your attention to when he was in there?
A. No, sir.
Q. It may have been 8 o'clock?
1073 A. Yes, sir; I didn't see the time. He would just drop in and go out.
Q. You know you saw him about 7 o'clock, and then once or twice later; it may have been 8 o'clock, but you do not know what time; and then when you went to close up?
A. Yes, sir.
Q. And that is all you remember about it?
A. Yes, sir.
Q. And the thing that fixes it on your mind is that you read the next morning that there had been a lynching; but it did not fix anything on your mind except that Frank Ward was in there?
A. I see an account of it.
Q. And that fixes——

A. That refreshes my mind about him being there.

Q. It did not refresh your mind about anything else but about Frank Ward. How far is your saloon from the jail?

A. Half a mile.

Q. Which way, north or south?

A. It is south.

Q. On the opposite side from the bridge?

A. Yes, sir.

Q. What street is it on?

A. Market street.

Q. Then there is a street car that runs right past your saloon, and runs within a block of the jail?

A. Yes, sir; within two blocks of the jail.

1074 Q. It would take a man on that street car about three minutes to go to the jail, would it not?

A. Not over that; may be about four minutes, or five.

Redirect examination by Mr. HOOD:

Q. I will ask you to state whether or not Mr. Ward was drinking a little more heavily on this occasion than usual.

A. He usually didn't get enough to go to sleep like he did that night.

Q. I will ask you to state whether or not this was the only time you ever put him in the hallway and locked the door.

A. That was the first time he ever was asleep on the street; yes, sir.

Q. I will ask you to state if that does not fix it on your mind as being the night of the lynching.

A. Yes, sir.

Mr. SANFORD. I object to the question as leading and suggestive to the witness.

By Mr. HOOD:

Q. I will ask you to state whether or not he was more boisterous than usual that night.

A. Yes, sir; he is a very boisterous man when he is drinking; decidedly.

Mr. SANFORD. I object to that question as leading and suggestive to the witness—directly leading.

1075 The WITNESS. He was very boisterous.

By Mr. HOOD:

Q. I will ask you to state if he was not there at your place of business most of the time during the hours from 7 until 11 that night; and if he was missing from there any length of time at any one time.

Mr. SANFORD. I object to that question as distinctly and directly leading, and suggestive to the witness as to the answer.

By Mr. HOOD:

Q. I will ask you about how long he was away from your place of business at any time that night between the hours of 7 and 11?

A. I couldn't say. He was out and in, but as to the time, how long he was out, I couldn't say.

Recross-examination by Mr. SANFORD:

Q. He is generally boisterous when he is drinking?
A. Very much so.
Q. A violent man?
A. Yes, sir; he is what I might call a fussy man when he is drinking.
Q. A fussy man?
A. Yes, sir.
Q. A dangerous man?
A. Yes, sir.

1076 J. M. PRINCE, a witness produced on behalf of the defendant Frank Ward, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. HOOD:

Q. What is your name?
A. J. M. Prince.
Q. Where do you live?
A. I live at 405 Fisher street.
Q. In Chattanoooga, Tenn.?
A. The streets are changed though. It is now 22nd street.
Q. Chattanooga?
A. Yes, sir.
Q. What is your business, Mr. Prince?
A. Bartender.
Q. Where do you work?
A. I work for Mr. Barnes.
Q. Where is his place of business?
A. 1057 Market street.
Q. You mean Mr. W. P. Barnes?
A. Yes, sir.
Q. How long have you been working for him?
A. Off and on I have been working for him for about 17 or 18 years.
Q. How long have you lived in Chattanooga?
A. I have lived here two or three different times.
Q. How long, altogether, have you lived here?
1077 A. Well, I have lived here about 10 years altogether.
Q. Do you remember the time Ed. Johnson was lynched?
A. Yes, sir.
Q. You say you were working for Mr. Barnes at that time?
A. Yes, sir.
Q. Do you know the defendant Frank Ward?
A. Yes, sir.
Q. How long have you known him?
A. I have known him about eighteen months.

Q. Where did he live at the time of this lynching? Where did Mr. Ward live at that time?

A. Where did Mr. Ward live at that time?

Q. Yes.

A. He lived upstairs over the saloon.

Q. State whether or not you remember seeing him on that night, the night of the lynching of Ed. Johnson.

A. Yes, sir.

Q. When and where did you see him?

A. He was in the saloon.

Q. There where you worked?

A. Yes, sir; right where I worked.

Q. What time did you see him there?

A. What time did I see him there?

Q. Yes; what hour was it you saw him there at the saloon?

A. Well, he was there quite often that night.

Q. From what hour? When did you first see him there that night?

1078 A. When did I first see him there that night?

Q. Yes.

A. Well, he was there from early morning—I mean it was in the early part of the night—until 8.20, when I left there.

Q. You quit work at 8.20?

A. Yes, sir.

Q. Was he there then?

A. Yes, sir.

Q. Had he been there constantly up to that time?

A. He wasn't there all the time, but he was there now and again, off and on.

Q. Was he there at the time you left?

A. Yes, sir.

Q. What was his condition that night?

A. Ha, ha! His condition was pretty serious.

Q. In what way?

A. In the way of drunkenness. He was pretty intoxicated; that is all—pretty well intoxicated.

Q. At the time you left, at 8.20?

A. At 8.20; yes, sir. I left there at 8.20.

Q. I will ask you to state how you can fix it on your mind that that was the night of the lynching.

A. The reason why it was—I didn't know anything about it; I didn't know whether it was that night or not. I didn't know it was that night until the next morning.

Q. What occurred the next morning to fix it on your mind?

1079 A. A man came in the saloon when I opened up next morning. I open up generally at 5 o'clock. That is my time to open up, at 5 o'clock. I have always. I always have opened up at 5 o'clock, if I get there at 5 o'clock. I opened up at 5 o'clock, and a man came in there and asked me——

Mr. SANFORD. I object to any statement as to what a man said to him, or any conversation the next morning, as hearsay.

By Mr. HOOD:

Q. State whether or not you learned of the lynching the next morning. When did you learn of it?

A. The next morning.

Q. Did you see Mr. Ward there the next morning?

A. No, sir; he wasn't there when I first learned it.

Q. Did he come there later?

A. Yes, sir.

Q. About what time did you see him?

A. I saw him about half past—oh, it was—I don't know what time it was. I didn't notice the time, but it was after I opened up quite a while. He came down and got his paper, and he came in and was talking to me about it.

Q. What happened there to fix it on your mind when Ward came in?

A. What is that?

Q. What happened between you and Ward that fixed it on your mind that it was the next morning after the lynching?

A. I told him——

Mr. SANFORD. I object to any statement or conversation between the witness and Ward the next morning, as hearsay.

1080 Mr. HOOD. I did not ask for the conversation.

Mr. SANFORD. But he is starting to give it, and that is the reason I object. He started to say what he told him. I object to that as hearsay, and inadmissible.

Mr. HOOD. We were not asking for the conversation.

Mr. SANFORD. I understand, but he is giving it. It does not make any difference whether you ask for it or not, he is proposing to tell it; and that is what I object to.

Mr. HOOD. We did not ask about it, but we are now going to ask about the conversation, and let your objection be noted in advance, if you wish.

Mr. SANFORD. I object to any conversation between the witness and Frank Ward next morning.

Mr. HOOD. We are not asking for it as evidence, but for the purpose of fixing what it was about, showing that it was on the day following the lynching.

By Mr. HOOD:

Q. Go ahead and state what occurred between you and Mr. Ward there that makes you know it was the day following the lynching.

A. You mean the conversation?

Q. Yes.

A. I believe——

Mr. SANFORD. I note the same objection.

The WITNESS. I believe Mr. Ward, after some conversation, told me that Ed. Johnson was lynched last night. I said: "Frank, if you hadn't been"—can I use the expression I used?

1081 Mr. SANFORD. I object to any statement.

By Mr. HOOD:

Q. Go ahead and tell it all as it happened.

A. That is what I want to do. I will use the expression I used if it is necessary.

Q. Tell it as it happened.

A. I said "Frank, if you hadn't been so damn drunk last night you might have been in that, too." That is exactly what I told him.

Q. And that fixes it in your mind that it was the morning after the lynching of Ed. Johnson?

A. Yes, sir.

Mr. SANFORD. I object to that question as leading.

By Mr. HOOD:

Q. Mr. Prince, from all the circumstances you have related, I will ask you to state whether or not you are positive that he was there on the night you speak of, the night of the lynching, up to 8.20?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. How long have you been a bartender?

A. Me? I have been, off and on, for I expect about 18 years; something near 18 years.

Q. Have you ever been in any other business?

A. Yes, sir.

Q. What other business?

A. In the rock quarry business, as foreman.

1082 Q. How long have you been keeping bar the last time?

A. I have been here about 18 months.

Q. That is, you have been at Barnes' saloon?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. What is that saloon called? Has it any particular name? What is Barnes' saloon called?

A. The Little Daisy saloon.

Q. It is called the Little Daisy saloon?

A. That is what it used to be called.

Q. At that time was it called the Little Daisy?

A. No, sir.

Q. What was it called then?

A. It hasn't had any real name since he built that building there.

Q. What was it called at the time this lynching occurred. If you had asked about that saloon, what would you have called it?

A. It didn't have any name then, only Barnes' saloon.

Q. Just Barnes' saloon?

A. That is all.
Q. And it has been since called the Little Daisy?
A. Well, it was before that.
Q. It had been called the Little Daisy, and it stopped being the Little Daisy at that time?
A. The saloon was bought out. That is, Mr. Barnes bought
1083 the place there, and built his building there; and after he bought out the Little Daisy and built this building there, he had his name put on it as Barnes' saloon, and it is on there yet.
Q. How long had Ward been living over the saloon?
A. I don't know.
Q. Did he have his family there living over the saloon?
A. That is, his wife, you mean?
Q. Yes; his wife.
A. Yes, sir.
Q. You do not know how long he had been living there?
A. No, sir.
Q. How long had you known Ward?
A. I have known him ever since I have been here.
Q. It was not an unusual thing for Ward to get drunk, was it?
A. Why, he gets full.
Q. He would go on sprees pretty often?
A. Ha, ha! Yes, sir.
Q. And get pretty drunk when he would go on them?
A. He would go on a spree now and again; yes, sir; ha, ha!
Q. Do you remember the last spree he was on before this one you have been telling about?
A. No, sir.
Q. Do you remember the one before that?
A. No, sir.
1084 Q. Do you remember any other spree? Can you fix the date of any other spree Ward was on except this one?
A. No, sir; I can't fix any date at all. I can say this: That he would get drunk any time, nearly, he wanted to, when he would get his money.
Q. He would get drunk whenever he wanted to get drunk, and he wanted to pretty often, did he?
A. He generally did; yes, sir.
Q. When did he first come into your saloon that day?
A. That day?
Q. Yes.
A. I don't know what you mean.
Q. I mean when did you first see him in Barnes' saloon on the day of that lynching, the day that lynching occurred? You say you saw him there that evening, or night. When did you first see him that day in your saloon?
A. That morning?
Q. That day.
A. I don't remember.

Q. Was it in the morning or afternoon?
A. He was drinking all day long, nearly.
Q. He was drinking all day long, nearly?
A. Yes, sir.
Q. How often was he in the saloon that day?
A. How often?
Q. Yes.
A. He was in there quite often.
Q. He was in there quite often during that day?
A. Yes, sir.
Q. Drinking, during the day?
1085 A. Yes, sir.
Q. When he was drinking he got boisterous and pretty dangerous, did he not, as a rule?
A. He didn't get boisterous to me.
Q. I mean with others. When he gets whiskey in him he gets pretty lively, does he not?
A. He gets pretty lively.
Q. He gets reckless, does he not?
A. If anybody bothers him when he is drunk he has always seemed to be ready to take his part, or something of that kind.
Q. He gets to be what you call a reckless and dangerous man when he is drinking. Is not that so?
A. No, sir; I wouldn't consider it that way.
Q. You would not consider it that way?
A. No, sir.
Q. He gets peaceable then when he is drinking, does he?
A. No, sir; there is one thing I can say, when Frank is drinking. Of course when he is drinking in the saloon, I could say "Frank, go upstairs and go to bed," or something of that kind, and he would generally mind what I say.
Q. Did you send him to bed that night?
A. No, sir.
Q. He was drinking, and you did not send him to bed?
A. No, sir.
Q. Why didn't you?
1086 A. I couldn't get him to go to bed. He was too drunk to go to bed.
Q. Did you try to get him to go to bed?
A. Yes, sir.
Q. And he would not go?
A. He was too drunk to go.
Q. How often did you see him in there that night? Do you remember the times?
A. No, sir; I don't know how often I saw him in there. He was in there quite a number of times.
Q. You left at 8.20?
A. I left the saloon at 8.20.
Q. And he was in a condition then in which he would not obey you?

A. He was in a condition that I wouldn't have nothing to do with him.

Q. I thought you told him to go to bed, and he would not go?

A. I did. I tried to encourage him to go upstairs and go to bed.

Q. And you could not control him?

A. No, sir.

Q. Who came in with him that night to the saloon?

A. I don't remember, sir, whether anybody did or not.

Q. You do not remember?

A. No, sir. You see I can't remember everybody that comes in the saloon.

1087 Q. When you saw by the paper the next morning that there had been a lynching, did you remember what occurred in the saloon the evening before?

A. No, sir.

Q. Do you remember anybody else that was in there that evening?

A. No, sir.

Q. Do you remember any conversation with anybody else?

A. No, sir; not a thing.

Q. Except that you remember Frank Ward being in the saloon and what you have detailed about it?

A. Yes, sir.

Q. You do not remember who came in with him?

A. No, sir.

Q. You do not remember how many times you saw him, except that he was in and out?

A. No, sir; he was just in and out. He would go out a little bit, maybe, and come back in and get another drink—something of that kind.

Q. Do you remember anybody drinking with him?

A. No, sir; I don't remember anybody that taken a drink with him. I don't remember the names. Somebody might have taken a drink with him, but I don't remember the name.

Q. Have you ever been in trouble here?

A. No, sir.

Q. Have you ever been arrested for anything?

A. No, sir; I hope not.

Q. You hope not?

A. Yes, sir.

1088 Q. Well, you know. I am asking you if you have.

A. I hope not.

Q. Do you mean by "I hope not" that you have not?

A. I have not; no, sir.

FRANK WARD, a witness produced on behalf of the defendant Frank Ward, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. HOOD:

Q. Your name is Frank Ward, and you are one of the defendants in this case?

A. Yes, sir.
Q. Where do you live?
A. I live at 506 Chestnut street.
Q. Do you remember the time of the lynching of Ed. Johnson?
A. Yes, sir.
Q. Where did you live at that time?
A. I lived at 1057½ Market street.
Q. Was that over Barnes' saloon?
A. Yes, sir.
Q. I will ask you to state where you were the night of the lynching.
A. I was around Mr. Barnes' there and in the restuarant there just beyond him, next door.

Q. What hours were you there about Barnes' saloon and
1089 the restaurant?

A. I went down in the saloon about seven o'clock and went from there over to the restaurant, or the chile stand, rather, and from there back into the saloon.
Q. What time did you retire that night?
A. About eleven o'clock, the best I can recollect.
Q. State whether or not you were in and around Barnes' saloon the entire time from seven o'clock in the evening until eleven that night.
A. Yes, sir; I was in the chile stand there. They call it a chile stand. It is a restaurant and chile stand together. I was in there and in the saloon until after Mr. Barnes closed.
Q. I will ask you to state, Mr. Ward, whether you knoew anything about the lynching of Ed. Johnson that night?
A. No, sir.
Q. When did you first learn about it?
A. The next morning when I went down to the saloon to get a drink.
Q. Who informed you of it?
A. Mr. Prince, the bartender for Mr. Barnes.
Q. Did you afterwards see it in the morning papers?
A. I picked up my paper as I went down. There is a hole in the door where they put letters and papers in—or rather a paper hole—and I picked up my paper as I went in. There is a side door that goes into the saloon, and I just picked up the paper as I went in. I
was feeling pretty bad, and I didn't look at the paper as I
1090 went in. I went on in around the bar and Mr. Prince asked me had I heard the news. I said, no——

Mr. SANFORD. I object to the statement of the conversation.

By Mr. HOOD:

Q. You need not tell what the conversation was; but Mr. Prince first informed you about the lynching?
A. Yes, sir.
Q. Did you have any knowledge or intimation that there was going to be a lynching that night?
A. No, sir.

Q. Had you had any agreement with anyone to help lynch Johnson that night?

A. No, sir.

Q. Or at any other time?

A. No, sir.

Q. I will ask you to state whether or not it came as a great surprise to you when you saw it in the morning paper?

A. Yes, sir.

Q. I will ask you to state whether or not you were about the county jail that night?

A. No, sir.

Q. Or the county bridge?

A. No, sir; I was not about the bridge or the jail, either, because that was the last place I would want to go.

1091 Q. You did not conspire, confederate, or agree with anybody to enter into the lynching at all?

A. No, sir.

Q. Had you heard it talked about beforehand?

A. No, sir.

Q. Where were you on the day following the lynching, Mr. Ward?

A. The day after the lynching?

Q. Yes, sir.

A. I was around home there and down in Mr. Barnes' saloon and in the chile stand there, and around in the block to Smith Brothers' grocery, down there where I dealt.

Q. I will ask you to state whether or not you know J. N. Stonecipher?

A. No, sir; I do not.

Q. I will ask you to state whether or not you saw him in front of Mullery's saloon on Market street about five o'clock or afternoon before the lynching?

A. No, sir; I wouldn't know the man if I would meet him.

Q. Did you have any conversation with him there in front of Mullery's saloon on Market street on the afternoon before the lynching?

A. No, sir.

Q. I will ask you to state whether or not you called J. N. Stonecipher out of Mullery's saloon, or saw him in front of Mullery's saloon and asked him if he was from Georgia, about five o'clock?

A. No, sir.

1092 Q. On the evening or afternoon before the lynching?

A. No, sir.

Q. Did you at any other time?

A. No, sir.

Q. I will ask you to state if he said anything to you about his ever living in Georgia or being raised there?

A. No, sir; I wouldn't know the man if I would see him.

Q. I will ask you to state whether or not you asked him to help lynch the damned negro that night?

A. No, sir; I am sure I wouldn't ask a man I didn't know anything such as that.

Q. Did you use any language to that effect?

A. No, sir.

Q. Did you see him on the day following the lynching?

A. No, sir; and I wouldn't know the man if I would meet him.

Q. I will ask you to state whether or not you saw him in front of Jack Price's about five o'clock on the day following the lynching?

A. No, sir.

Q. I will ask you to state if you told him on the afternoon before the lynching, in front of Mullery's saloon, that it was all agreed, that there would not be any sheriff and deputies at the jail that night?

A. No, sir; I don't know nothing about that at all.

Q. You say you had no conversation with him the day following the lynching in front of Jack Price's saloon?

1093 A. No, sir.

The COMMISSIONER. Counsel can see the witness shake his head; but it is important for him to make his answers so that the stenographer can put them down.

Mr. HOOD. Say yes or no, Mr. Ward.

By Mr. HOOD:

Q. I will ask you to state whether or not you stated to J. N. Stonecipher, in front of Jack Price's saloon, about five o'clock on the day following the lynching, "You are the first damned man from Georgia I ever saw that didn't have nerve enough to kill a nigger."

A. No, sir; I never said no such thing.

Q. Did you say anything like that to him?

A. No, sir; I did not.

Q. I will ask you to state whether you said that or anything like it to anybody else in his presence or hearing.

A. No, sir; I did not. I had no right to say no such thing.

Q. I will ask you to state whether you used any such language as I have asked about, there or anywhere else.

A. No, sir.

Q. You say you would not know Stonecipher if you were to see him?

A. No, sir; I wouldn't know the man if I would see him.

Q. I will ask you to state whether or not you know anything about the United States Supreme Court having taken jurisdiction of the Ed. Johnson case at all.

A. No, sir.

1094 Q. Before the lynching?

A. No, sir; I did not.

Q. When was the first time you know they had taken any action in the case at all?

A. After he was lynched.

Q. I will ask you this question, Mr. Ward: Do you remember on the night of this lynching, just prior to the time you retired, of wak-

ing up and finding yourself in the hallway leading up to where you lived?

Mr. SANFORD. I object to that question as leading and suggestive to the witness.

By Mr. HOOD:

Q. Go ahead.

A. I woke up about eleven o'clock or a quarter past eleven, or some time; I don't know what time it was, of course, but I was on the steps. The door was fastened, and I have a night lock on the door. I woke up and looked around and I seen I was at home and I went up stairs and went to bed.

Q. You retired?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. Who was it told you after this lynching that the Supreme Court had made an order in the Ed. Johnson case?

A. I seen it in the paper.

Q. What paper?

1095 A. The "Times."

Q. What day?

A. I think it might have been about the 20th, I reckon.

Q. You mean the next morning you saw it in the "Times?"

A. Something like that. It might have been a day or two afterwards, but I know it was talked around that he was a United States prisoner.

Q. You did not know anything about it until you saw it in the Times the next morning, or a day or two afterwards?

A. No, sir.

Q. You knew that Ed. Johnson had been arrested and tried, did you not?

A. Yes, sir.

Q. But you did not know the Supreme Court had taken any hand in it, or made any order with reference to the matter, until after he was lynched?

A. No, sir.

Q. What is your business?

A. I am a bricklayer.

Q. Where were you working at that time?

A. I was working out at the United Pipe Works.

Q. Who is the president of that company?

A. I forget the man's name.

Q. Who were you working for at that time?

A. Fisher & Brown.

1096 Q. How long had you been working for them?

A. Seven or eight months. They were building an addition to the pipe works there.

Q. They were building an addition to the pipe works?

A. Yes, sir.

Q. You had been working for them seven or eight months.
A. Something like that; I don't know exactly.
Q. How long before this Monday you speak of did you quit working for them?
A. What is that?
Q. What did you do Monday, the day of the lynching?
A. I was around home.
Q. You did not go to work that day?
A. No, sir.
Q. Who is the bookkeeper for Fisher & Brown?
A. I don't think they have any bookkeeper.
Q. Who keeps their books?
A. The foreman always carries the time. I was there working with Mr. Brown, one of the firm.
Q. You did not go out there Monday at all?
A. No, sir.
Q. Had you been at work the week before?
A. I worked out there Saturday.
Q. Did you work all of the week before?
A. I disremember. I might have worked all of the week, or I might not have worked but three or four days.
Q. When did you go back to work after the lynching?
A. I went back to work—well, it might have been Wednesday or Thursday; I don't remember exactly.
1097 Q. How long did you work?
A. I couldn't say how long I worked.
Q. You recollect, do you not?
A. Of course——
Q. Did you work a week, a month, or six months?
A. For Fisher & Brown?
Q. Yes; with them.
A. Oh, I worked two months, I reckon, after that with them.
Q. You went back and worked for about two months with them?
A. Yes, sir.
Q. Before you worked for Fisher & Brown, did you work on different contracts around town, different houses?
A. Oh, yes; I worked on several buildings, but I was working for a different contractor. I worked for several contractors around town.
Q. Who have you worked for?
A. I worked for a fellow named Rollins, the foreman for Westcott. I worked for Westcott four years.
Q. Who else?
A. Fisher & Brown.
Q. You have worked for Westcott and Fisher & Brown in Chattanooga?
A. Yes, sir.
Q. How long have you been in Chattanooga?
A. I have been here, I suppose, four years altogether.
Q. Where did you come from?

1098 A. I came from Nashville here.

Q. Where did you come from before you went to Nashville?

A. I lived in Nashville about sixteen years.

Q. Where were you born?

A. I was born in Warren County.

Q. Warren County, Tennessee?

A. Yes, sir.

Q. Did you go from there right to Nashville, or did you go anywhere else in the meantime?

A. I worked at several other places before I went to Nashville. I worked in Huntsville, Alabama, for the Fortune Brick Company.

Q. You did not work for anybody else in Chattanooga except the two parties you speak of?

A. No, sir.

Q. Did you work on any odd jobs—separate houses?

A. You mean separate contracts?

Q. I worked for Tom Ryall, after that trouble came out.

Q. Before that time?

A. No, sir.

Q. Did you ever work on a contract with Mr. Stonecipher?

A. No, sir; I never seen the man as I know of. I wouldn't know him if I met him.

Q. Did you ever do any work for him?

A. No, sir.

1099 Q. You did not?

A. No, sir; I didn't know he was a contractor.

Q. Where were you on the day of the lynching, to your recollection? What did you start in doing that day in the morning?

A. That morning?

Q. That morning.

A. It is a general thing for bricklayers on Saturday to get to drinking around among themselves, in crowds. We were all drinking around——

Q. I did not ask you where you were drinking Saturday, but if you want to tell it, it is all right. You began drinking Saturday, did you?

A. Yes, sir.

Q. Who drank with you Saturday?

A. A lot of bricklayers I worked with out there.

Q. Do you remember their names?

A. I don't know as I remember any exact names—just a crowd that worked there together, a crowd of bricklayers.

Q. How much did you drink Saturday?

A. I haven't any idea.

Q. Did you get drunk?

A. Well, I didn't get drunk.

Q. What do you call getting drunk? How much does it take to get you drunk?

A. I couldn't say that.

Q. What were you doing Sunday? Still drinking?

1100 A. I was laying around home.

Q. Were you still drinking? Did you have any whiskey with you?

A. I had some whiskey I bought Saturday night in my room.

Q. You were still drinking over Sunday? What did you start out doing Monday morning?

A. I tried to sober up from the old drinking I was doing Saturday night and Sunday.

Q. You tried to sober up?

A. Yes, sir.

Q. You went to a pretty bad place to sober up when you went down stairs, did you not?

A. A man always takes a drink or two to try to straighten up.

Q. Did you only take a drink or two Monday?

A. I don't know how many drinks I taken. I didn't keep account.

Q. Tell us what you did Monday.

A. I was drinking around there and up taking a nap and then down to the chile stand and down to the store where I traded at.

Q. What store?

A. Smith Brothers.

Q. Where are they?

A. Down the street there, about four or five doors from where I lived.

Q. Did you see any one there?

1101 A. I don't remember——

Q. Which Smith did you see; which one of the brothers?

A. The oldest one.

Q. What is his name?

A. I forget the first part of his name.

Q. Did you buy anything from him?

A. I don't remember whether I did or not.

Q. What time of the day were you there in his store?

A. I can't tell exactly. It was some time in the morning.

Q. It was some time in the morning?

A. Yes, sir.

Q. Who did you drink with that day?

A. There was several of us drinking together there. I don't remember exactly.

Q. Were they bricklayers or other men?

A. Some of them were bricklayers.

Q. Who were they?

A. I think a fellow by the name of Mitchell taken a drink with me that morning.

Q. What is he?

A. He is a bricklayer.

Q. Where does he work?

A. I don't know where he is working now.

Q. What is his first name?

A. Doc. Mitchell.

1102 Q. Was he working for these same people at that time?
A. I don't think he was.
Q. Where did he take a drink with you?
A. In Mr. Barnes'.
Q. How many drinks did you take with him?
A. I couldn't say.
Q. More than one?
A. I couldn't say that.
Q. Who else did you take a drink with there that morning or afternoon?
A. I have no idea. Several came in and I taken a drink. I don't know who all.
Q. Do you remember anybody else that you saw or talked to that day?
A. I think Waldus Bradley came in from the chile stand. I think I went in there and got a chile.
Q. At what time?
A. I couldn't say.
Q. Was it in the daytime or at night?
A. It was in the daytime, and I was in there that night.
Q. Besides that who else do you remember seeing?
A. I don't know. There is so many I meet that I couldn't say.
Q. Where did you go in the afternoon?
A. In the afternoon?
Q. Yes.
1103 A. I laid right around home and slept that evening.
Q. Where were you about five o'clock?
A. About five o'clock? Why, I couldn't say just exactly where I was at five o'clock. I know I was around there, up stairs there.
Q. What was the name of the saloon you were asked about?
A. Mullery's.
Q. Were you not around that saloon on Market street about five o'clock that afternoon?
A. No, sir; I was not.
Q. How far is that from the saloon where you were that day, Barnes'?
A. It is about three or four blocks; may be more than that.
Q. Did you not go from one saloon to another? Did you not go down to Mullery's saloon—is that the name of it?
A. Mullery's.
Q. Did you not go to Mullery's that afternoon?
A. I don't think I did.
Q. Do you say you did not?
A. I wasn't around Mullery's, I don't think, at all.
Q. Did you not talk to people at Mullery's and at other places, some of whom you did not know; or did you limit your conversation to people you knew that day?

1104 A. I couldn't say that. I don't know who I talked to. I meet so many people around, and a man don't generally keep a memorandum of people's names.

Q. Especially when a man is drinking and in the condition you were in, he talks pretty freely, does he not?

A. Not altogether.

Q. Drinking does not have a tendency, then, to make a man talk freely and incautiously? You do not think it does?

A. I don't know about that.

Q. What is your observation along that line? What is your experience?

A. Of course a man is pretty talkative when he is drinking. He talks right smart, then, of course.

Q. He will talk less cautiously then than when he is sober; is not that your experience and observation?

A. I couldn't say that.

Q. You do not know how that is. Does drinking make you talkative, or does it make you stop talking?

A. I don't know. Like a great many others, when I am drinking I will talk a little.

Q. It loosens your tongue, does it not?

A. Well I——

Q. Do you get boisterous?

A. No, sir.

Q. You do not get boisterous? Witnesses who have said that you get boisterous and dangerous are mistaken, then? You do not get boisterous and dangerous?

1105 A. Not dangerous. I take my part when anybody tries to run over me at any time.

Q. Whether you are drinking or not?

A. Yes, sir.

Q. What effect does drinking have on you? Can you tell?

A. I don't know that drinking has any more effect on me. I take my part when a man tries to run over me any way.

Q. You stand up for yourself?

A. Yes, sir; I do that any time or any where.

Q. Can you tell us where you were at five o'clock that afternoon?

A. I was at home.

Q. Upstairs?

A. Yes, sir.

Q. You were not down in the barroom at five o'clock?

A. No, sir.

Q. What time of the day did you go up?

A. I couldn't say; I don't know exactly the time.

Q. How do you remember that you were in your room at five o'clock?

A. I generally eat supper about half past five or six o'clock—always—because I quit work at half past four and get home about five, and I generally eat supper about a quarter after five or half past.

Q. But you were not working that day.

1106 A. No, sir.

Q. So you were not doing what you regularly did that day were you?

A. No, sir.

Q. Did you eat supper that day?

A. Yes, sir; I did.

Q. You recollect that?

A. I do.

Q. Where did you go after supper?

A. I went down stairs.

Q. Into this saloon?

A. Yes, sir.

Q. Who did you meet down there?

A. I disremember who I met down there. There is so many in a place like that that a man can't tell who he meets in a place of that kind.

Q. Can you recollect anybody?

A. I can't say that I can. I don't remember it. There is always men coming in and going out.

Q. They are friends of yours around there, men you know—most of them or a large number of them?

A. I don't know everybody that went in there.

Q. You knew a large number of them, did you not?

A. I couldn't say who was in there that evening, because I don't know.

Q. You do not remember anybody you met in there that evening?

1107 A. I couldn't say that I do.

Q. How long did you live at Nashville?

A. How long did I live there?

Q. Yes.

A. You mean before I came here to work?

Q. Yes; before you came here.

A. I couldn't say exactly; I suppose eight or ten years.

Q. Was there any lynching that occurred when you were in Nashville?

A. None that I remember of.

Q. Did you ever make any statement about taking part in any lynching over in Nashville?

A. No, sir.

Q. Did you take part in any lynching over in Nashville?

A. No, sir; I did not.

Q. Have you made any statements about dynamiting the jail, or anything of that sort, or trying to?

A. No, sir.

Q. Were you mixed up in anything of that sort over in Nashville?

A. No, sir; I never was arrested in Nashville in my life.

Q. Have you ever been arrested anywhere?

A. Once, here.
Q. What for?
A. Drunk on the street.
1108 Q. What was the charge against you?
A. Just drunk.
Q. Just drunk?
A. Yes, sir.
Q. Have you ever been indicted for anything?
A. No, sir; and I never was fined either.
Q. You have never been fined?
A. No, sir.
Q. How did you get that scar on your face?
A. I got it cut.
Q. In a fight?

A. No, sir; it was not in a fight. I was president then of the bricklayers' union. Two Mexicans came and wanted me to give them a card. I wouldn't give them a card. I asked them if they belonged to the union. They said they belonged in Mexico City. I said, "This ain't Mexico City. This is the United States." One of them said, "The president of the union there give me a card and give me tools to work with." I says, "I ain't no hardware store." I says, "I don't know whether you are bricklayers or not, and I wouldn't give you a card. I wouldn't give my brother a card without I know he was a bricklayer." I was working right across the street there and they came over to the building and wanted me to give them a card. So he met me that evening that I got the cut here and he says, "What are you going to do about giving me that card." I says, "I will give you a permit and you will be recognized on any job you go on. You pay a dollar a day; if you are a bricklayer, you pay a
1109 dollar a day until you pay in $17.50 and then you can join the union if you desire to." There was a good deal of work here. I was working for Westcott at the time, across the street there. He had some fellow with him. He says——

Mr. SANFORD. I do not care for all this conversation, unless you do, Mr. Hood.

Mr. HOOD. Let him tell it. You asked how he got the scar.

Mr. SANFORD. I do not object to it. It is just taking up time; that is all.

The WITNESS. I won't tell any more of it then.

Mr. SANFORD. If you want to, go ahead.

The WITNESS. I was telling you about the scar—the cause of it.

Mr. SANFORD. All right; go ahead.

The WITNESS. Never mind. I don't care to explain the whole thing.

Mr. SANFORD. You can make any statement about it you want to. I asked you the question.

The WITNESS. That is how I came to be cut, being the president of the Bricklayers' Union.

By Mr. SANFORD:

Q. You had a row with the Mexicans?

A. I didn't have no row at all.

Q. Did they cut you?

A. Yes. One of them knocked me down and the other cut
1110 me, because they said I was trying to keep them out of work, as much work as there was here.

Q. That is the way you got the scar?

A. Yes, sir.

Q. What time did you get up next morning?

A. Which morning?

Q. The morning after the lynching, after the night you were in the saloon there?

A. I suppose it was something like half past five o'clock. Maybe it might have been six.

Q. You got your paper and went down in the saloon and had the conversation down there. Then where did you go from there?

A. I went up stairs and eat my breakfast.

Q. What did you do after breakfast? When did you get through breakfast?

A. I never noticed what time. Sometimes I am fifteen or twenty minutes eating, and sometimes longer.

Q. About what time was it?

A. I couldn't say, because I don't know.

Q. Can you give us within an hour of when it was?

A. I don't suppose it was over half an hour after I sat down to eat before I was away from the table.

Q. What time did you sit down?

A. It was about six o'clock, I suppose.

Q. Then you got through about half past six?

A. It might have been.

Q. Where did you go then?

1111 A. I went to my room and sat down.

Q. How long did you sit down?

A. I went in the room and sat down and read the piece in the paper about Johnson to my wife.

Q. How long did it take you?

A. I have no idea.

Q. Where did you go after that?

A. I stayed up there in the room.

Q. Until what time?

A. I couldn't say, not knowing.

Q. Was it an hour or two hours?

A. It might have been an hour or it might have been two hours.

Q. Did you go out at all before dinner?

A. I went back down in the saloon; it might have been eight or nine o'clock, or ten.

Q. Then where did you go after you had been down in the saloon?

A. I stayed around there. I generally hung around there all the time when I wasn't at work.

Q. You hung around there all morning, didn't you?

A. Yes, sir.

Q. Why did you not go to work Tuesday?

A. I didn't feel like it.

Q. You had not got in fix yet to go to work? Is that the idea?

A. That is the idea.

Q. When did you go to work, according to your recol-
1112 lection?

A. It might have been Wednesday, or it might have been Thursday; I don't know exactly—when I got straightened up so I could do a square day's work.

Q. What is your recollection about it?

A. Well, it might have been Wednesday—I don't know.

Q. Is that your best recollection?

A. I can't say, because I don't know exactly.

Q. You do know that you went back to work some day that week?

A. I could find out by seeing Mr. Brown. The day book would tell.

Q. I am asking for your recollection.

A. I couldn't say, because I don't know.

Q. Do you recollect going back to work that week?

A. Oh, yes.

Q. You are positive about that?

A. Yes.

Q. You worked two or three days that week—the latter part of the week?

A. Something like that.

Q. You worked the week before that?

A. I couldn't say I worked all of it.

Q. You worked part of it?

A. Yes. Of course rainy days a man can't work on outside work, and sometimes we have to wait for something—window frames
1113 or brick or sand or lime or something like that. A bricklayer's work is uncertain. Lots of people think they make a fortune. They have to lay off over half the time.

Q. You worked the working days of the week before?

A. I might have worked most of them. I couldn't say.

Q. You worked Saturday and got your pay Saturday?

A. I couldn't say. I think I worked Saturday, but I couldn't say.

Q. Were you a subscriber to the Chattanooga Times at that time?

A. Yes, sir.

Q. How long before that had you been taking it?

A. I suppose I taken that paper—well, I couldn't say how long.

Q. Some months?

A. Something over a year.

Q. Did you see the Monday morning paper?

A. Yes, sir; I picked it up as I went down the steps into the saloon.

Q. Did you read that paper?
A. Yes, sir.

Redirect examination by Mr. HOOD:

Q. Mr. Sanford has asked you about some trouble you had
1114 with those Mexicans. I will ask you to state whether or not that Mexican was arrested and prosecuted in the criminal court here in Hamilton County for cutting you?
A. Yes, sir.
Mr. SANFORD. I object.

By Mr. HOOD:

Q. I will ask you to state whether or not he was sentenced for it.
A. Yes, sir.
Mr. SANFORD. I object, as wholly irrelevant and immaterial.

By Mr. HOOD:

Q. Did anything occur between you and Mr. Prince in Mr. Barnes' saloon early next morning after the lynching that fixed in your mind where you were the night before? If so, state what that was.
A. Next morning I went down the steps. There is a door at the side that goes into the saloon, and my paper is dropped in every morning about five o'clock. I had a hole cut in there to put the paper in. I went down and just picked up the paper and went on in the saloon. I went in there and Mr. Prince said to me when I went in——
Mr. SANFORD. I object to any statement as to any conversation between the witness and Prince or any other person the next morning, as hearsay and inadmissible.

By Mr. HOOD:

Q. State what occurred.
A. I went on in, and he says, "Frank, did you hear the news?" I said, "No. What news?" He said, "They hung
1115 Ed. Johnson last night." He says, "If you hadn't been so damned drunk I would have accused you of being in it." I says, "I wasn't in it. I was drunk all right."
Mr. SANFORD. I may want to recall Mr. Ward later.
Mr. HOOD. He will be here.

JOHN R. PITNER, a witness produced on behalf of the defendant, Frank Ward, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. HOOD:

Q. Mr. Pitner, where do you live?
A. 226 Vine street, Chattanooga.
Q. Are you in business here?
A. Yes, sir.
Q. What is your business?
A. The wholesale tobacco and cigar business.
Q. What is the name of your firm?

A. Peeples & Pitner Brothers.
Q. You are one of the members of the firm?
A. I am.
Q. How long have you lived in Chattanooga?
A. I came here in February, 1890.
Q. Where was your former home?
A. Whitfield County, Cohutta, Georgia.
1116 Q. I will ask you to state whether or not you are acquainted with the general character of J. N. Stonecipher, a witness for the Government in this case?
A. I am.
Q. Are you acquainted with his general reputation?
A. Yes, sir.
Q. Is it good or bad?
A. Bad.
Q. From that general character, is he entitled to full faith and credit on his oath in a court of justice?
A. No, sir.
Q. You and Stonecipher are from the same county, and were raised near each other?
A. The same county, and adjoining civil districts. He is just across the line from where I was.

Cross-examination by Mr. SANFORD:

Q. How many years ago was that?
A. That I knew him?
Q. Yes.
A. It has been at least twenty-five years.
Mr. SANFORD. I object to evidence as to reputation twenty-five years ago, as entirely too remote.

Redirect examination by Mr. HOOD:

1117 Q. I will ask you this question, then. I will ask you to state if you know what his general reputation was in Whitfield County, Georgia, where he formerly lived, and his general reputation in Hamilton County, Tennessee, where he lives now?
A. Yes, sir.
Q. Is that good or bad?
A. Bad.

Recross-examination by Mr. SANFORD:

Q. How many people do you know in Hamilton County that know him?
A. How many?
Q. Yes.
A. I couldn't say how many.
Q. Do you and he have the same friends and acquaintances?
A. We have some; I suppose so.
Q. Can you name any man who is a mutual friend or acquaintance of yourself and Stonecipher?

A. Well, Doc. Boyd was one that was raised in the same country, and I had a brother——

Q. Is he a friend and acquaintance of Stonecipher?

A. I don't know whether he is a friend. He is an acquaintance.

Q. I asked who you know who are friends and acquaintances of Stonecipher. You say you have mutual friends and
1118 acquaintances. As a matter of fact, do you associate with the same people? Are you around with the same people he is with?

A. In a business way. When I knew him I was in a mercantile business at Cohutta, Georgia.

Q. But that was 25 years ago?

A. I said it was twenty-five years ago when I knew him first. It was twenty-five years, up until this present time.

Q. How long has it been since you lived in Cohutta?

A. I moved here in 1890.

Q. That is seventeen years ago.

A. That is seventeen years ago.

Q. You have not had business dealings with Stonecipher since that time?

A. No, I have not.

Q. What business have you had with him?

A. I have had an account against he and his father that I furnished his father when the post-office there was robbed, and his father has died and the note is still owing to my father and myself.

Q. You have never been able to collect the note from his father's estate?

A. No, sir.

Q. You have had disputes and rows with Stonecipher, and hard words?

A. Not with John.

1119 Q. Who have you had hard words with?

A. No one. I have had the account put out for collection.

Q. You have been trying to collect it and have never been able to collect it?

A. No, sir.

Q. You have been after it, trying to get Stonecipher to pay it?

A. I have been trying to get the old man to pay it.

Q. And you have been wanting the boys to pay it?

A. No; I never asked John or H. M. to pay it.

Q. When was your last business transaction with Stonecipher?

A. It has been some years.

Q. A good many years ago?

A. Well, twelve or fifteen years.

Q. What was it about?

A. It was in the way of this note.

Q. It was in the way of this note?

A. Yes.

Q. You were trying to get him to pay that note?

A. That is, through his father.

Q. And you got mad because he wouldn't pay it.

Mr. Hood. We wish to note an objection to testimony as to whether he has had any transactions with Stonecipher.

By Mr. Sanford:

Q. You got mad because they wouldn't pay it?

1120 A. No, sir; I didn't get mad.

Q. You thought he ought to pay it?

A. Yes; the note ought to have been paid.

Q. Since that time, when you had transactions with him, fifteen years ago, name a single person you know that is an associate and acquaintance of Stonecipher's. What man do you know in the city of Chattanooga to-day who associates with Stonecipher and with yourself, both, and who talks to you about Stonecipher's reputation?

A. Well, now, I have talked to several. One is Mr. Wolfe.

Q. When have you talked to Mr. Wolfe?

A. It has been four or five or six months ago.

Q. The conversations you have had about Stonecipher have been since this suit came up, and since he was a witness?

A. No, sir.

Q. Have you had talks with him in the last few days about being a witness in this case?

A. No, sir.

Q. Did you not reproach him for being a witness in the case?

A. No, sir; I haven't spoken to him except to say good morning on the street in six or twelve months.

Q. Besides this man Wolfe, tell us who else you know that knows Stonecipher. You are not in the contracting business, are you?

A. No, sir; I am in the wholesale tobacco business.

1121 Q. You stay right in your store?

A. Yes.

Q. In the wholesale tobacco business?

A. Yes, sir.

Q. How do you come in contact with the men Stonecipher comes in contact with, so as to know what people generally think about him?

A. Just through general conversation.

Q. Do you know who he associates with? Do you know who his friends are?

A. No.

Q. Do you, as a matter of fact, know the people that know Stonecipher, generally speaking? Do you know his friends and acquaintances?

A. I know some of the contractors that know him and some of the mill men that know him.

Q. The contractors are his competitors in business, are they not?

A. I don't know whether they are direct competitors or not.

Q. He is a contractor?

A. I don't know whether he is a contractor.
Q. What contractor do you know that knows him?
A. Mr. Moody.
Q. Who else?
A. I know Mr.——
Q. How do you know Mr. Moody knows Stonecipher?
1122 A. (Continuing.) Horner.
Q. How do you know they know Stonecipher?
A. I have talked to them about it.
Q. When did you talk to them about it?
A. I couldn't say exactly; some four or five or six months ago.
Q. Since he was a witness in this case?
A. No, sir.
Q. Are you prepared to say that you are, generally speaking, acquainted with Stonecipher's acquaintances; people that know him?
A. To a certain extent, yes.
Q. Do you know one hundred per cent of the men that know Stonecipher, or his acquaintances?
A. No, sir; not one hundred per cent.
Q. Do you know one per cent of the people who know Stonecipher?
A. I couldn't say that.
Q. Do you believe you do, taking his acquaintances and the men that come in contact with him and have dealings with him?
A. Taking the acquaintances in Georgia, I should say I did.
Q. That is fifteen years ago. I am talking about in Chattanooga. You have not lived in Georgia for fifteen years?
A. No, sir; but I have had a home there. I have been in business here, but I only married about eleven years ago.
1123 Q. You do not live in Georgia?
A. No, sir; I live here.
Q. And have been for fifteen years?
A. I have been in business for fifteen years.
Q. Is it not true that in your business here you are brought in contact with very few people that are brought into direct contact with Stonecipher?
A. A very few.
Q. You do not know, generally speaking, what esteem the people that know Stonecipher hold him in, do you, because you do not know them?
A. I don't know as many, I suppose, here as I would in Georgia.
Q. You do not know, generally speaking, the people here who know Stonecipher. You do not know the people he goes with or his associates, do you?
A. No, sir.

H. D. Rider, a witness produced on behalf of the defendant, Frank Ward, on being first duly sworn by the commissioner according to law, testified as follows:

By Mr. HOOD:

Q. Where do you live?

A. I live in Chattanooga, on Burch street.

1124 Q. How long have you lived here?

A. Since 1855, sir.

Q. What is your business?

A. Contractor.

Q. Do you know Mr. J. N. Stonecipher?

A. Yes, sir.

Q. A witness for the Government in this case?

A. Yes, sir.

Q. How long have you known him?

A. I think I have known him for ten years, at least, or more, I expect.

Q. Are you acquainted with his general reputation?

A. From what I know of the general rumor. Is that what you want?

Q. What people would say if they were called on. Do you know his general reputation in the community?

A. Yes, sir.

Q. Is that good or bad?

A. Bad, now.

Q. From that character and from that reputation, is he entitled to full faith and credit on his oath in a court of justice?

A. I don't think so.

Cross-examination by Mr. SANFORD:

Q. When it get to be bad; since this suit came up, and since he has been a witness?

1125 A. All I have heard about it has been since the suit came up.

Q. Since the suit came up, and since he testified in the case against a lot of defendants, he has been getting a bad reputation?

A. No.

Q. You did not know anything about it, or never heard of his bad reputation before this suit came up, did you?

A. No, sir.

Q. How many years have you known him?

A. Ten or twelve years. He has worked for me.

Q. He had a perfectly good reputation until the time the suit came up?

A. I never heard anything against it until that time.

Redirect examination by Mr. HOOD:

Q. I will ask you if you have not heard since about his bad reputation extending back for a number of years?

Mr. SANFORD. I object to that question as leading.

By Mr. HOOD:

Q. State whether you have or not.

A. I have heard that since this case came up.

Q. That it extended back prior to that time?

A. Yes, sir; prior to that.

Recross-examination by Mr. SANFORD:

Q. Who told you that?

1126 A. I just heard the general rumor. I heard Dr. Boyd speak about it.

Q. Has not your information about his former reputation come from Dr. Boyd? Is not he the man who told you?

A. No, sir; several people about here on the street said he robbed a post-office.

Q. I did not ask you that. I asked you if you did not get your information mainly from Dr. Boyd.

A. No, sir; not more than others. It is general reputation on the street.

Q. Were they men that knew Stonecipher?

A. They knew him around here. They knew him as well as I did, I couldn't tell you exactly who it was now, only I heard Dr. Boyd speak the other day about it.

Q. Who brought you here as a witness? How did you happen to be a witness?

A. Mr. Marquette brought me first. He got me in it first.

Q. He first spoke to you about it?

A. He didn't say anything to me about——

Q. How many men do you know who are acquainted with Stonecipher?

A. I expect I know two or three hundred or three or four hundred.

Q. Who are they?

A. I will take W. T. Green, down here, and take everybody

1127 there in his hardware house, and Mr. Newman, over there, and Mr. Marquette there, and Mr. Wood over there, and this man here [indicating].

Q. This man here is one of the defendants?

A. Yes, sir. There is one there [indicating], and there is one over there [indicating], and two over here [indicating], and one over there [indicating].

Q. You are naming a good many of the defendants in this case, are you not?

A. No, sir.

Q. You named Marquette and Padgett.

A. There is one there [indicating], and he ain't a defendant, and this man here [indicating] ain't.

Q. How many of those men have you heard talk about Stonecipher?

A. Two or three of them; I don't know which ones. I would hear them talking. And there is Judge Shepherd there.

Q. He is one of the lawyers for the defense, is he not?

A. Yes, sir; and he is my lawyer, too.

Q. How many of these men you mention have you heard talk about Stonecipher?

A. I have heard——

Q. I do not ask for their names, but how many?

A. Half a dozen.

Q. When has that conversation been?

A. Since this Shipp case came up?

1128 Q. There is a good deal of feeling against Stonecipher, is there not, on account of his testimony?

A. I think there is.

Q. You have heard a good deal of indignation expressed against him because of his testimony in this case?

A. Indignation?

Q. Various efforts have been made here to break him down, and the people are talking about it, and you have been talked to?

A. I have talked about it, too.

Q. It is since this suit came up and since he was a witness, that Dr. Boyd told you about his bad reputation?

A. He didn't tell me. He talked to other people, and I heard it. He was talking to a lawyer when I heard it.

Q. He has been talking to other parties, and you have heard him talking to other parties?

A. I heard him speaking to a lawyer about it. That is the only one. I haven't heard him talk to anybody else.

Q. But all that came up since Stonecipher was a witness in this case?

A. Yes, sir; since what they call his butting into it.

Q. Because he was under subpœna from the Government to be a witness, they call it "butting in," and they have been talking about his bad reputation. That is the fact?

A. I don't know whether he is subpœnaed by the Government. He has been kind of playing detective, I think they said, about it.

1129 Q. Do you know anything about his playing detective?

A. No; I have simply seen him standing around in a crowd when they were talking about the lynching.

Q. And you never heard about it until he was a witness in this case?

A. No, sir.

Q. And since then you have heard all this about his previous reputation?

A. Yes, sir.

Redirect examination by Mr. Hood:

Q. Did you hear Stonecipher when he was on the stand testify that he had no interest in this case at all?

A. I never heard anybody testify in the suit.

Q. I will ask you to state if, during the time you have been around the court room since this trial has been going on, you have not seen him in the hall here continually?

A. Yes, sir; I talked to him out there day before yesterday.

Mr. SHEPHERD. Mr. Attorney-General, I want to ask the witness a question.

By Mr. SHEPHERD:

Q. State whether you ever heard me say anything about Stonecipher, except to inquire of you if you would go on the witness stand and testify that you would not believe him on his oath.

1131 A. That is all.

Q. And that was in the interest of my client?

A. Yes, sir. I never heard you say anything detrimental to Stonecipher. Judge Shepherd did not say anything.

By Mr. SANFORD:

Q. Judge Shepherd did not say anything about Stonecipher?

A. No; he asked me about Mr. Stonecipher's general reputation.

Q. Judge Shepherd never said he had a bad reputation at all?

A. No, sir.

Mr. SANFORD. That is what I thought.

Mr. SHEPHERD. I wanted to have the record straight about that.

1132 T. J. MOODY, a witness produced on behalf of the defendant Frank Ward, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. HOOD:

Q. Mr. Moody, what is your business?

A. Contractor and builder.

Q. Where do you live?

A. In Chattanooga.

Q. How long have you lived in Chattanooga?

A. Eight years.

Q. Do you know J. N. Stonecipher, a witness for the Government in this case?

A. I do.

Q. How long have you known him?

A. Why, about seven years, I suppose.

Q. Are you acquainted with his general reputation?

A. I am.

Q. Is it good or bad?

A. Bad.

Q. From that reputation is he entitled to full faith and credit on his oath in a court of justice?

A. I would not give it.

Q. Is he entitled to it?

A. I should say not.

Cross-examination by Mr. SANFORD:

Q. What business are you in?

1133 A. Contractor and builder.

Q. How long have you been living in Chattanooga?

A. Eight years.

Q. You are a competitor in business with Stonecipher, are you not?
A. I am not.
Q. Is he not a contractor?
A. He is a journeyman, and I am a contractor.
Q. Is he not a contractor?
A. Not as I know of.
Q. Then you do not know him very well, do you?
A. He has worked for me as a journeyman.
Q. Is he not also a contractor? Did he not quit being a journeyman and go to contracting?
A. Not as I know of. He worked for me about six years ago.
Q. Have you seen him since?
A. I have seen him often on the street.
Q. Do you not know as a fact that he has gone to contracting?
A. I don't know.
Q. Then if he has gone to contracting, you know so little about him that you did not know that?
A. He has never been no competitor of mine in any job as I know of.
Q. You did not know him well enough even to know that he was a contractor, if he is a contractor?
A. I have seen him often on the street, but I never seen him on the contract.
1134 Q. You did not know he was a contractor?
A. No; I didn't know.
Q. And you do not know it now?
A. No, sir.
Q. Have you ever had any fuss with him?
A. I have not.
Q. Did you ever have any suit with him over wages or anything of that sort?
A. I have not.
Q. Who has been talking to you about Stonecipher's reputation?
A. Oh, I can't say. It is just the general talk of a good many people.
Q. Has Dr. Boyd ever talked to you about him?
A. Doctor who?
Q. Boyd.
A. No, sir.
Q. Who has been talking to you about him? Try to give us some idea.
A. I can't say. It is just general conversation. I don't know.
Q. All of that general conversation has been since he was a witness in this case, has it not?
A. Well, I can't say it has been since he has been a witness in this case.
Q. Try to recollect if that is not so. Did he not testify in this case along in February?
A. I don't know.

Q. You don't know?

1135 Q. Had not this case been published in the papers as it went along, and did you not read in the papers about Stonecipher being a witness?

A. Yes; it was published in the papers.

Q. And Stonecipher was a witness?

A. Yes.

Q. He told about a good many of the defendants, about conversations, &c., did he not?

A. Yes.

Q. There has been a great deal of feeling against Stonecipher since that time, has there not? A great many people have been going around and saying things about him?

A. I can't say they have. I never heard anybody say anything against him.

Q. I thought you said a while ago that you had heard a good many?

A. I haven't heard anyone say anything against him at all, only that they wouldn't believe him on his oath.

Q. Then they have been talking against him?

A. I have heard two or three express themselves that they wouldn't do it.

Q. That has been since he testified as a witness, has it not?

A. I have heard that since he testified.

Q. You have heard people say that they would not believe him on his oath?

A. I should say so.

Q. Have you heard over two or three?

A. Well, I couldn't say over two or three.

1136 Q. Now, is that all you have heard talk about him?

A. I have heard a heap of people talk about him. I haven't heard over two or three say they wouldn't believe him on his oath.

Q. You have heard a great many people talk about him, but only two or three that said they would not believe him on his oath?

A. That is about all I could say.

Q. The rest of them have not said anything of that sort?

A. No.

Q. And you have heard a great many people talk about him?

A. Well, I have heard several people; I couldn't say a great many. I have heard several people talk about him. It has been the general talk.

Q. How many people do you know that know Stonecipher? Do you know one per cent of the people that know Stonecipher, in your judgment? You do not even know that Stonecipher is a contractor; you have not employed him for six years. Now, do you actually know one per cent of the people that know Stonecipher or have business with him?

A. I would put in everybody in Chattanooga, very near.

Q. Do you know nearly everybody in this town?
A. I think I do.
Q. And you think you know pretty nearly everybody that knows Stonecipher?
A. I couldn't say that I know pretty near everybody that knows him.
1137 Q. What is the population of Chattanooga?
A. Oh, I expect, taking Chattanooga and the suburbs, it would be about fifty-five or sixty thousand.
Q. And you know pretty nearly every one of them?
A. That is, all the business men.
Q. The business men?
A. The business men; yes.
Q. Do you know what business dealings Stonecipher has with the business men of this city?
A. I haven't the least idea.
Q. Have you heard the business men talk about Stonecipher?
A. Well, I have heard some, you might say.
Q. Have you heard the majority of the business men of this town talk about him?
A. I never have heard them express themselves at all.
Q. Then do you know whether one per cent of the business men of this town know Stonecipher?
A. Within my knowledge, I don't know; but they have been on the street here, and undoubtedly they do.
Q. You are just guessing at that, then; you do not know?
A. I don't know.
Q. You do not know three business men in Chattanooga who know Stonecipher, so far as you know?
A. Oh; yes, sir.
Q. How many do you know that you know know Stonecipher?
A. Oh, I would say fifty, anyhow.
1138 Q. You say that you know fifty business men——
A. That know Stonecipher.
Q. How many of them have you heard talk about him in the last four months?
A. I haven't heard but one.
Q. That is not enough to make a general reputation on, is it?
A. Well, I would say three.
Q. Have you heard three?
A. I have heard three.
Q. Out of those 50 business men?
A. I have heard three.
Q. Then you only know what three out of fifty business men think about Stonecipher?
A. I am expressing what I think. I don't know what the other fellow thinks.
Q. Then you do not know what the other people think about him?
A. I am testifying what I think about him.

Q. What you think about him? That was what you meant to testify, was it.

A. Yes, that was what I meant to testify.

Q. You did not mean to testify then as to what people generally think about him?

A. I know what the general opinion is about him, from what I have heard they say about him.

Q. You have only heard three people speak about him, as I understand you. You have not heard the majority of people that know him talk about him?

1139 A. I don't know the majority of the people that know him. I know plenty of people that knows him.

Q. But you have not heard the majority of them talk about him, have you?

A. No, I wouldn't say that.

Q. You have just heard a very few talk about him?

A. I have heard several talk about him.

Q. And on that you are basing your opinion?

A. I am basing my opinion on my own knowledge.

Q. On your own knowledge?

A. Yes, sir; what I know about him.

Q. That is not the question. The question is what other people think about him. Your opinion, then, is based on your own knowledge?

A. And what I have heard about the general opinion of people.

Q. Which is it based on the most?

A. It would be about equal; mostly on my own opinion.

Q. Mostly on your own opinion?

A. Yes.

Q. And not on what you have heard people say about him.

A. On my own opinion.

Mr. SANFORD. I object to the testimony of this witness.

By Mr. SANFORD:

Q. You have only known him six years?

A. Six or seven.

Q. You have not had any transaction with him for six

1140 years?

A. The last business transaction was when he worked for me as a journeyman six years ago.

Q. That is the last business transaction you had with him?

A. That is the last business transaction I had with him.

Q. And you do not know what he has been doing since that time? You have only seen him on the street?

A. I have seen him on the street.

Q. Have you had any talk with him in six years?

A. I don't recollect that I have. Possibly I have spoken to him.

Q. Do you recollect whether you have or not?

A. Yes; I think I have spoken to him.

Q. Where have you spoken to him in six years?

A. On the streets; on Market street.
Q. Do you know what place on Market street?
A. I don't know what place. I recollect I spoke to him on Market street several places.
Q. Do you remember when it was?
A. Some two or three months ago.
Q. What did you say to him; did you just pass the time of day with him?
A. Just passed the time of day.
Q. You had no business transaction with him?
A. No, sir.

1141 Redirect examination by Mr. HOOD:

Q. I will ask you, Mr. Moody, whether you base his reputation on what you know yourself or what other people say of him?
A. On what other people say and what I know myself.

T. J. SHOLL, a witness produced on behalf of the defendant, Frank Ward, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. HOOD:

Q. Where do you live, Mr. Sholl?
A. I live at 601 East 16th street.
Q. How long have you lived in Chattanooga?
A. About seven years.
Q. Where did you formerly live before you came here?
A. Dalton, Georgia.
Q. Is that in Whitfield County?
A. Yes, sir.
Q. Do you know J. N. Stonecipher?
A. Only by reputation, sir.
Q. How long have you known him?
A. Definitely, I couldn't say; a long time.
Q. Was he raised in Whitfield County?
A. I suppose so, sir. He had been there as far back as I can recollect.

1142 Q. As far back as you can remember?
A. Yes, sir.
Q. Are you acquainted with the general reputation of Mr. Stonecipher?
A. I suppose so; yes, sir.
Q. Is it good or bad?
A. Bad.
Q. From that reputation is he entitled to full faith and credit on his oath in a court of justice?
A. Not with me.

Cross-examination by Mr. SANFORD:

Q. How long have you known him yourself?
A. I never knew him, only by reputation.

Q. When did you first know him by reputation?
A. Oh, it has been some years ago.
Q. Where was he living?
A. He was living in the upland county.
Q. Where were you living?
A. At Dalton.
Q. Have you known him and followed him since he came to Chattanooga?
A. No, sir.
Q. Do you know how long he has been living in Chattanooga?
A. No, sir.
Q. Do you know what he has been doing since he came to Chattanooga?
1143 A. No, sir.
Q. Have you known anything about him since he came to Chattanooga?
A. Nothing whatever.
Q. You do not know what kind of a reputation he has made in Chattanooga?
A. No, sir.
Q. What you are testifying to is his reputation before he came to Chattanooga; is that it?
A. Yes, sir; that is it.
Q. And how many years ago was that?
A. I suppose it is anywhere from 9 to 15 years.
Mr. SANFORD. I object to all the testimony as to his former reputation as too remote to be admissible in this present case.

Redirect examination by Mr. HOOD:

Q. Mr. Sholl, did your father formerly hold an official position in Whitfield County, Georgia?
A. He was clerk of the court there.
Q. Clerk of the superior court?
A. Yes, sir.
Q. At Dalton?
A. Yes, sir.
Q. Were you or not assistant clerk there during the time he was clerk?
A. Yes, sir.
Q. You were familiar with the court record there?
1144 A. I was raised up in the office, you might say.
Mr. HOOD. I may want to introduce another witness or two, if the court please. Mrs. Ward is sick and not able to be here to-day. I would like to reserve the right to put her on when she comes.
Mr. SANFORD. That will be all right, any time before the defendants get through.
Mr. HOOD. And also Mr. Waldus Bradley, if we can get him.
Mr. SANFORD. Any time before the defendants get through will be all right as to either one of those. Of course we will except to the

competency of Mrs. Ward's testimony, but it is all right for you to bring her.

Testimony on behalf of the defendant, Luther Williams.

Mr. CHAMLEE. We will now take up the case of the Government against Luther Williams. I would like to ask one question, Mr. Sanford, of you and the commissioner. Is there anything in the order of the United States Supreme Court in this case that requires or designates how the witnesses shall be introduced, whether or not the defendant first and then the other witnesses?

1145 Mr. SANFORD. Nothing in the world. The fact is, I do not know that we are limited to testimony in chief and in rebuttal. We are just taking testimony.

Mr. CHAMLEE. The reason I make that inquiry is that if we had heretofore at any time introduced witnesses in advance of the defendant and had made a mistake about it, we want to recall them before the case closes.

Mr. SANFORD. There is nothing in that, absolutely nothing.

Mr. CHAMLEE. If not, we will proceed in the regular order in which we have been proceeding heretofore. Another reason I referred to that is that, of course, we are all familiar with the rule under the statutes of Tennessee, but I did not want that to get in the way in this case to rule anybody's testimony out.

Mr. SANFORD. No exception has been made on that ground anyway.

Mr. CHAMLEE. No, sir; I knew there had not, but I just wanted to ask for information.

Mr. SANFORD. There is nothing in the order of the court that refers to it in any way. That is the situation. You may take your own course in reference to the law, but there is nothing in the order of the court that refers to it.

Mr. CHAMLEE. I wanted to ask for this information at a time when we had the witnesses all available, so that if there was any mistake up to this time we might correct it now.

The COMMISSIONER. There is nothing in the order at all on
1146 that point, but it was understood when we began the taking of testimony in February, as I think the record will show, that the plaintiff was to introduce its evidence, the defendants to introduce their evidence, and then the plaintiff to bring in their testimony in rebuttal. That is my understanding.

Mr. CHAMLEE. My only reason for bringing up this question is that in Tennessee the rule of practice requires the defendant to go on the stand first and then introduce his witnesses following him. In one or two instances we have not done that in this case, and if we had made any mistake we wanted to correct it now while the witnesses are all here.

All the witnesses in the case of Luther Williams will please come up and be sworn—Mr. Martin, Mr. Cox, Mr. Geismar, Mr. Spencer, Mr. Close, and Mr. Conner.

The COMMISSIONER. Do you want to swear them all at once?

Mr. CHAMLEE. I just want to get them in according to the rule; that is the object. You might just swear them all together to save time.

(The witnesses, Martin, Cox, Geismar, Spencer, Close, Conner, and the defendant, Williams, were thereupon duly sworn by the commissioner.)

Mr. CHAMLEE. Mr. Geismar, will you take the stand?

The COMMISSIONER. All the witnesses except the one who is about to testify must retire from the room.

1147 SOLOMON GEISMAR, a witness produced on behalf of the defendant, Luther Williams, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Geismar, do you live in Chattanooga?

A. Yes, sir.

Q. What official position, if any, do you hold in Hamilton County?

A. I am on the county revenue commission at present.

Q. Did you ever hold any other official position in Chattanooga?

A. Yes, sir. I was elected constable in Chattanooga and served for two years. I served as United States field deputy marshal for about a year under Mr. R. W. Austin. When the office of deputy United States marshal was created at Chattanooga, I was appointed to that position and served under Mr. Austin till Mr. Austin was retired, and when Mr. Austin was retired Mr. Dunlap retired me; and since then I have been on the county revenue commission.

Q. That was under the administration of Mr. McKinley?

A. No.

Q. Under the first administration of the present President?

A. Yes, sir.

Q. Mr. Geismar, do you know the defendant, Luther Williams?

A. I do.

Q. How long have you known him?

1148 A. About five or six years.

Q. Do you think you know what the majority of his neighbors would say about him if they were called on to speak of his general character?

A. I do.

Q. Is that general character good or bad?

A. Good.

Q. From that general character would you give him full faith and credit on his oath in a court of justice?

A. I would.

Q. As to his being a peaceable and lawabiding citizen, Mr. Geismar, do you think you know his character on that subject?

A. I do.

Q. Is that character good or bad?

A. Good.

Mr. SANFORD. I object to evidence other than that relating to his general reputation.

Cross-examination by Mr. SANFORD:

Q. How long have you known him?
A. About five or six years.
Q. Are you a close friend of his?
A. Well, we are friends. I can't consider it close.
Q. How often do you see him?
A. I might see him every day, every other day, or every
Q. Do you belong to any societies or lodges with him?
A. I do not.

1149 Q. How do you happen to see him?

A. Well, our office is in the court-house, and I generally go down Market street to get meals, and at night I generally go up and down Market street and see Luther and speak to him in passing; that is all.

Q. Just in passing?
A. Yes, sir.
Q. What is his business?
A. He is in the saloon business.
Q. You do not go into his saloon every morning?
A. No, sir. I go in there occasionally, and meet him on the street.
Q. I thought you said you met him every day.
A. I would say I average seeing him every other day.
Q. Do you go into his saloon every other day?
A. No, sir. I go in and take a glass of beer occasionally.
Q. That is the time you see him?
A. No, sir; I see him on the street too.
Q. Is he a bartender?
A. No; he is the proprietor of the saloon.
Q. Does he tend bar?
A. I have seen him tend bar.
Q. Does he wait on you and give you drinks when you go there?
A. No, sir; he does not. I guess Luther Williams himself personally hasn't waited on me across the bar in months.

Q. How much do you go with him outside of the time when
1150 he is in the barroom?

A. None at all.

Q. You do not run with him at all?
A. No, sir.
Q. He is not one of your associates, is he?
A. I couldn't say he was. I come in contact with him on the street.
Q. You know what I mean by one of his associates. He is not one of your associates in social hours, outside of the time when he is in the saloon?
A. No; not since I have been in Chattanooga.

Q. And you do not know who he runs with, do you? You do not know what he does outside of the time when he is in the barroom?

A. That is the only thing I know; he is in the saloon business.

Q. You go in there to get a drink, and he is perfectly peaceable with you when you are getting a drink? He never has a row with you while you are in there getting a drink?

A. I have lived in Chattanooga six years, and never knew him to have any trouble.

Q. Do you keep track of him outside?

A. No; I don't keep track of any man's business.

Q. You have your own associates and you own friends?

A. Yes, sir; certainly.

Q. And he is not one of them?

A. No; I wouldn't consider him one of my associates.

Q. So you do not know what he does outside?

1151 A. Well, no; I don't know what he does outside.

Q. Do you know and do you associate with the men that generally associate with Luther Williams?

A. Yes; I come in contact with quite a few of his friends.

Q. Generally speaking?

A. Yes. The way I come in contact with them, my father has been in business here over 40 years, and they usually come in the store. I used to be with my father years ago, and that is the reason I know Mr. Williams and know his associates.

Q. His associates are among the saloon keepers, are they not?

A. I wouldn't consider all of them are.

Q. Is not that the general rule? Do not men in the saloon business associate with each other?

A. They generally do, but I wouldn't swear that he just associates with saloon keepers.

Q. I say, generally speaking, would not they be his associates? Do you know who his associates are?

A. Well, I suppose I know a few of them.

Q. Name some of his associates that you know.

A. Well, Luther is this kind of a fellow, as much as I know of him. He is a distant fellow, and generally you will see him by himself on the street walking along.

Q. He associates with himself?

A. I see him with his partner considerable, and I have noticed him with——

Q. You think he flocks by himself mostly?

1152 A. Well, he is generally by himself.

Q. Then you do not know who his associates are, do you?

A. Of course I see his partner considerable.

Q. He has a good reputation with his partner, but outside of his partner do you know who his associates are?

A. No. I should judge, in the length of time I have known him, he has got as good a reputation as any one.

Q. You never heard how that is.

A. No; I never inquired into his business. I never went around with his friends to find out.

Q. You have never heard them speak of him?

A. So far as I know, I never heard nothing against him.

Q. You have never heard anybody talk about him, have you?

A. No; I never heard anybody talk about him.

Q. One way or the other?

A. No, sir.

J. O. MARTIN, a witness produced on behalf of the defendant, Luther Williams, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

1153 Mr. Martin, do you hold any official position in Chattanooga at this time?

A. I am a member of the board of councilmen.

Q. What ward were you elected from?

A. The second ward.

Q. How long have you been a member of the city council in Chattanooga?

A. Fifteen years.

Q. Have you ever held any other public position or official position in Hamilton County?

A. I was a member of the registration commission here two years, I think it was.

Q. Do you know the defendant, Luther Williams?

A. Yes, sir.

Q. How long have you known Mr. Williams?

A. I have known Mr. Williams, I think, six or eight years; possibly ten. I am not sure about that.

Q. Do you think you know his general reputation and character in the community in which he lives; that is, what the majority of the neighborhood would say about him if they were called on to speak about him?

A. Yes, sir; I think I do.

Q. Is that general reputation good or bad?

A. It is good.

Q. From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A. Yes, sir.

1154 Cross-examination by Mr. SANFORD:

Q. What is his business, Mr. Martin?

A. He is in the saloon business?

Q. How often do you see him?

A. Why, I see him sometimes two or three times a week, I suppose.

Q. Where do you see him?

A. I meet him on the street and he buys some goods from us. He is in our store sometimes.

Q. What business are you in?
A. The wholesale whiskey business.
Q. He is one of your customers, is he?
A. Yes, sir.
Q. He pays you well?
A. Yes, sir.
Q. And you see him mostly in your store, then, do you?
A. I meet him on the street and in the store, too.
Q. How often do you meet him on the street?
A. I would say two or three times a week.
Q. Where do you meet him generally?
A. On Market street—different places on Market street.
Q. Does he tend bar at his saloon?
A. I don't know whether he stands a watch or not.
Q. You do not go into his barroom, do you? Have you ever been in his barroom?
1155 A. I have been in it a few times. I haven't been in it, I suppose, in two months.
Q. How often do you go into his barroom?
A. I don't think I was ever in it more than three times since he has been in business.
Q. How long has he been in business?
A. Why, I don't know; three or four years, I should say.
Q. And you have never been in there more than three or four times during that time?
A. I don't think I have; no, sir.
Q. You do not know much about what he does in business hours?
A. No, sir.
Q. Do you know who his associates are?
A. Well, I can't say that I do.
Q. Do you know who he runs with, who his friends are, and who he associates with when he is out of business?
A. No, sir; I don't.
Q. Do you know who he associates with in business hours?
A. Well, no; I don't know who he associates with.
Q. And you do not know who he associates with out of business hours?
A. I think he is a man that pays pretty strict attention to his business.
Q. And you do not know who he associates with?
A. Mostly his customers, I suppose.
Q. People who come in to get drinks?
A. Yes, sir.
1156 Q. Do you know what those people that he associates with think about him? Did you ever hear anybody talking about him?
A. I never heard anybody say anything against him.
Q. Have you ever heard any one say anything about him one way or the other?

A. No.

Q. As a matter of fact, then, you do not know what the people who are his associates think about him?

A. No, sir; I do not.

Q. You do not?

A. No, sir.

Q. Practically all you know about him is that, so far as you are concerned, he pays his bills when he gets whiskey from you, and you have always got along well with him. That is really about all you know about him?

A. Well, yes; that is all I personally know about him.

Mr. SANFORD. I object to the testimony of this witness as not showing any general reputation whatsoever, and therefore incompetent.

SAMUEL A. CONNER, a witness produced on behalf of the defendant Luther Williams, having been first duly sworn by the commissioner according to law, testified as follows:

1157 By Mr. CHAMLEE:

Q. Mr. Conner, do you live in Chattanooga or near here?

A. I live in the suburbs—Hill City.

Q. What business are you engaged in now?

A. Real estate.

Q. Do you know the defendant Luther Williams?

A. Yes, sir.

Q. How long have you known him, Mr. Conner?

A. I have known him five or six years.

Q. Do you know what business he is engaged in now?

A. He is in the whiskey business.

Q. Do you know where his place of business is?

A. I don't know the number. It is between 6th and 7th on Market.

Q. Were you ever in the liquor business yourself?

A. Yes, sir.

Q. Where was your place of business?

A. 522 Market street.

Q. How far is 522 Market street from his place of business?

A. A little over a block.

Q. How far is his place of business from J. O. Martin's place of business?

A. Well, I presume that is about a block. Martin is between 8th and 9th. No, between 7th and 8th Mr. Martin is.

Q. They are all in the business section of Chattanooga—in the principal part of the city?

1158 A. Yes, sir.

Q. Do you think you know the general reputation and character of Mr. Luther Williams, a defendant in this case, in the neighborhood in which he lives?

A. Why, I think I do very well; yes, sir.

Q. Is that general reputation and character good or bad?

A. It is good, so far as I know.

Q. From that general reputation and character is he entitled to full faith and credit on his oath in a court of justice?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. How long have you known Luther Williams?

A. Five or six years. I am not positive.

Q. How old a man is he?

A. I don't know. I suppose he is between 30 and 35 years old.

Q. When you say you were in the liquor business do you mean the saloon business?

A. The saloon business.

Q. Were you a bartender?

A. I was the owner of it. I tended bar.

Q. Were you ever a regular bartender?

A. Yes, sir; about a year.

Q. When did you go out of the saloon business?

A. I went out in December, 1895.

1159 Q. Were you in any lodges or societies with Mr. Williams?

A. No, sir.

Q. Are you now?

A. No, sir.

Q. How often do you see Mr. Williams?

A. I couldn't say. Possibly twice a week or something like that.

Q. Where do you see him.

A. I meet him often on the street. I pass down to the office down by his place of business.

Q. Do you go into his bar room?

A. Occasionally I do; yes, sir.

Q. How often do you go in there?

A. I should say about once a week.

Q. Do you see him there when you go in?

A. Not often; no.

Q. Who are his associates in business hours there? Who are his friends and his associates?

A. What do you mean; his bartenders?

Q. I mean the men that he is intimate with; the men that he is around with.

A. Well, I couldn't say who he is intimate with. I see Nash there a good deal, and Pool.

Q. Paul Pool?

A. No.

Q. What Pool?

A. I think it is Ward Pool.

Q. What does he do?

1160 A. He is a bricklayer.

Q. Is he a brother to Paul Pool? Do you know Paul Pool, a defendant in this case?

A. I don't know him.

Q. Who else do you know that associates with him?

A. I don't know.

Q. Do those men go around with him outside of business hours, or do they just come in to get drinks; is that it?

A. They are there oftener than others.

Q. You see them there oftener than others?

A. Yes, sir.

Q. What I am trying to find out is who are his associates when he is off duty—when he is not in his saloon.

A. I couldn't testify to that.

Q. Then you do not know what people outside of his saloon think about him, if you do not know who his associates are, do you?

A. Well, I never heard anybody say anything against him or for him.

Q. You never heard anybody say anything against him or for him?

A. No. I only know his character, so far as I know.

Q. So far as you know, he is all right?

A. From what I have heard; yes, sir.

Q. But you have never heard anybody outside of his business talk about him at all?

A. I can't say that I have.

Q. Then you do not know what people generally think
1161 about him, do you, because you never heard them say; and you can not tell what you never heard, can you?

A. No.

Q. All you know is that he is pleasant to you when you come into his bar room, and you do not know anything against him?

A. Yes, sir.

Q. You do not run around with him outside of business hours, do you?

A. No, sir.

Redirect examination by Mr. CHAMLEE:

Q. Mr. Conner, I think you said a while ago that you went out of business in 1895.

A. No; 1905.

Q. That is what you meant to say; 1905?

A. Yes, sir.

Q. Have you played pool with Mr. Williams at his place and been in and out there while you were in business and while he was in business?

A. Yes, sir; I played some pool with him. There was always a good crowd in there.

Q. State whether or not you came in contact with men there at his place that associated with him and with you.

A. Yes, sir.

Q. And in that way you were able to fix your impressions about his general character?

A. Yes, sir.

1162 Recross-examination by Mr. SANFORD:

Q. Did Mr. Williams ever get into any trouble that you ever heard of?

A. Yes, sir.

Q. What was that?

A. He had a difficulty with a nigger.

Q. What was the result of that?

A. Why, he killed him.

Q. Did he ever kill anybody else?

A. Not that I know of.

Q. If he did, you never heard it?

A. I never heard it.

Q. How long ago was that?

A. Four or five years ago.

Q. You had heard that?

A. Yes, sir.

By Mr. CHAMLEE:

Q. I will ask you if you had not also heard, in reference to this same matter, that it was an entirely justifiable killing?

A. Yes, sir.

Mr. SANFORD. I object to the leading and directly suggestive nature of that question.

By Mr. CHAMLEE:

Q. State, if you know, what was the result of that trouble.

1163 Mr. SANFORD. I object to that as incompetent and irrelevant.

A. I understand the nigger was advancing on him with a knife, and Mr. Williams shot him.

By Mr. CHAMLEE:

Q. And he was tried in the courts and acquitted?

A. Yes, sir.

Mr. CHAMLEE. Mr. Commissioner, Mr. Cox is a character witness, and he was in here and heard the other witnesses testify.

Mr. SANFORD. Just let the record show that he was here. Has he not been a witness?

Mr. CHAMLEE. No.

Mr. SANFORD. You have been a witness, have you not?

Mr. COX. No, sir.

C. W. Cox, a witness produced on behalf of the defendant Luther Williams, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Cox, do you live in Chattanooga?

A. Yes, sir.

Q. Where is your place of business?

A. I am in the wholesale whiskey business, 717 Market street.

Q. In Chattanooga?

1164 A. Yes, sir; with the firm of E. R. Betterton & Co.

Q. How far is that from where Mr. Williams' place of business is located?

A. It is not quite a block.

Q. Do you know the defendant, Luther Williams?

A. Yes, sir.

Q. How long have you known him, Mr. Cox?

A. Why, I couldn't say. Eight or ten years, I guess.

Q. Do you think you know his general reputation and character in the community in which he lives?

A. Yes, sir.

Q. Is it good or bad?

A. I imagine it is good. I never head anything to the contrary.

Q. From that general reputation, is he entitled to full faith and credit on his oath in a court of justice?

A. I suppose so. I would believe him on oath. I never heard anything to the contrary. I take it for granted that it is good.

Cross-examination by Mr. SANFORD:

Q. He is a customer of yours, is he not?

A. Yes, sir.

Q. What is your firm?

A. E. R. Betterton & Company.

Q. Your firm is in the wholesale liquor business?

A. Yes, sir.

1165 Q. And you sell the saloons?

A. Yes, sir.

Q. How long has he been a customer of yours?

A. Ever since he has been in business.

Q. How long is that?

A. I think he has been in business at different times, maybe, about six or eight years, I believe.

Q. He is still a customer of yours?

A. Yes, sir.

Q. He deals with you considerably?

A. Well, a reasonable amount.

Q. How often do you see him in his saloon?

A. I couldn't say; sometimes, maybe, two or three times a week.

Q. Who are his associates there in the saloon?

A. I couldn't recall any names.

Q. As a matter of fact, do you know his associates?

A. I know people around town generally that are in those places.

Q. The kind of people that frequent bar rooms; is that what you mean?

A. All sorts of people; yes, sir.

Q. People who are in the habit of frequenting bar rooms?

A. Yes, sir. I see them on the streets, you know.

Q. Do you know who are Luther Williams' associates?

A. Just from my knowledge of it, I think the people he associates with are the men he buys goods from and sells goods, to, largely.

1166 Q. The wholesale whiskey dealers and the people who frequent the barroom?

A. Yes.

Q. Do you know any others besides the members of your own firm?

A. Well, there are different people in business here.

Q. Does he associate with you socially?

A. Well, no; I don't know especially——

Q. Were you ever out with him? Is he a personal associate of yours?

A. I might have been out with him; I don't remember now, but very seldom.

Q. Do you have social relations with him? Did you ever meet him out? Do you know who he goes with?

A. No; I think he attends pretty close to business.

Q. Then, as a matter of fact, you do not know who his associates are and who he goes with in a social or friendly way?

A. No; I don't know about that.

Q. If you do not know who his associates are, you do not know what they think about him, do you?

A. I don't know who his associates are except as I have already stated.

Q. But you can not name any of those that are his clients; that is, people that come in and take drinks? You do not know who they are, do you?

A. I could name them over if I could think of the names, because I know the people?

Q. Did you ever hear any of those men speak about him?

1167 A. No, sir.

Q. You do not remember of ever having heard anybody speak about him?

A. I couldn't name any specific occasion.

Q. As a matter of fact, Mr. Conner, do you ever know what the men he associates with regularly think about him? Is it not simply this, that he is a customer of yours; that he has paid his bills to you; you have never had any trouble with him, and do not know anything against him?

A. Oh, it is generally understood that Luther is a straight man and all right, and a good fellow.

Q. Who have you heard say that?

A. I couldn't name them now, but that is the general impression in the community. Everybody knows that.

Q. Whom do you know in the community that knows Luther Williams or associates with him, outside of your firm?

A. Why, I don't know; I wouldn't know of anybody especially that associates with him.

Q. When did you ever hear anybody talk about him?
A. I don't remember.
Q. You do not remember ever hearing anybody talk about him?
A. Oh, I didn't say that. I don't remember any specific case. I couldn't remember a date or a name.
Q. You can not name any specific person?
A. No; I wouldn't swear to it.
Q. You do not know anybody?
A. Oh, I know several. I know different people that he knows, of course.
1168 Q. He is not an associate of your firm, is he?
A. Well, he is a good friend of ours.
Q. He comes in and buys and then goes out?
A. Yes.
Q. But I mean you do not run around together outside of business hours, do you?
A. Why, I don't know about that. We are glad to meet him any time.
Q. But as a matter of fact he is not one of your associates; he is a business acquaintance?
A. Yes, sir; somewhat.
Q. He is a business acquaintance and a customer?
A. Largely that; yes.
Q. Did you know that he had killed a man?
A. I had heard something about that. I had forgotten, though, till the other witness was speaking about it.
Q. You heard the other witness tell that?
A. I had forgotten about it.
Q. Do you know whether he ever had any other trouble?
A. No; not that I remember of.

EDWARD G. SPENCER, a witness produced on behalf of the defendant Luther Williams, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

1169 Q. Mr. Spencer, do you hold any official position in Chattanooga?
A. Yes, sir; I am one of the council.
Q. What ward were you elected from?
A. The second ward.
Q. Are you engaged in business in Chattanooga?
A. Yes, sir.
Q. What kind of business are you engaged in?
A. Family groceries and liquors.
Q. Where is your place of business located, Mr. Spencer?
A. 421 Market street, between 4th and 5th streets.
Q. Do you know the defendant Luther Williams?
A. Yes, sir.

Q. How far is your place of business from his place of business?
A. About two blocks and a half.
Q. How long have you known Mr. Williams?
A. Some seven or eight years; probably longer.
Q. Do you think you know his general character and reputation in the neighborhood in which he lives; that is, what the majority of the people would say about him if called on to speak?
A. Yes, sir; I think I do.
Q. Is that general reputation good or bad?
A. I think it is very good. I never have heard anything against him, in regard to his character.
Q. From that general character is he entitled to full faith and credit on his oath in a court of justice?
A. He is considered so; yes, sir.
1170 Q. How long have you had your place of business there within a block or two of his place of business, Mr. Spencer?
A. How long have I been in business there?
Q. Yes.
A. Thirty-seven years.

Cross-examination by Mr. SANFORD:

Q. I did not understand what business you were in, Mr. Spencer.
A. Liquor and grocery business; family groceries and liquors.
Q. Is Luther Williams a customer of yours?
A. No, sir; not particularly. He drops in sometimes and takes a drink, or something of that kind.
Q. Are you a wholesale or retail liquor dealer?
A. Retail.
Q. In other words, you keep a barroom?
A. Yes, sir.
Q. I did not understand that. And do you tend bar yourself?
A. Yes, sir.
Q. Does Luther come into your barroom occasionally?
A. Once in a while he drops in; yes, sir.
Q. That is where you got acquainted with him?
A. No; I don't think I ever got acquainted with him in there.
Q. Where did you get acquainted with him?
A. I first knew him when he went in the saloon business
1171 with Mr. Vandergrift.
Q. When was that; how many years ago?
A. I couldn't say; five or six or seven years ago.
Q. What did he do for Vandergrift; was he a bartender?
A. They were in partnership together.
Q. Then when he got out of that he went in for himself at his present place?
A. Yes, sir.
Q. What do they call his saloon?
A. The Rosebud saloon.
Q. What do they call your saloon?
A. Spencer's saloon.

Q. It has no other name but that?
A. No, sir.
Q. How often do you go into the Rosebud saloon?
A. The only way ever I was in there was from the Market street entrance.
Q. What is the difference between the Market street entrance and the other entrance? Are there two entrances?
A. I really don't know, sir. I never was in the back way at all.
Q. I asked you how often you were in there?
A. Well, I go up the street probably two or three times a week, and sometimes when I go by I stop in there.
Q. Is Williams a friend of yours?
A. Yes, sir.
Q. Are you close acquaintances?
A. Only just as business men would be.
1172 Q. Are you associates outside of business hours?
A. No, sir.
Q. You do not go with him outside of business hours?
A. I don't believe I have ever been on any trips with him at all.
Q. Do you belong to any lodge with him?
A. Yes, sir; I belong to one lodge.
Q. What lodge is that?
A. Eagle Lodge.
Q. Does he belong to the Eagles?
A. Yes, sir.
Q. And you belong to the Eagles?
A. Yes, sir.
Q. Outside of that how often do you see him?
A. I see him nearly every day.
Q. Where do you see him nearly every day?
A. Generally about his place or on the street. I sometimes see him on the street going home, to or from home, either on the street or around his business place.
Q. Who are his associates?
A. I have got to consider that. (A pause.) A party named Knight, Beeler, Spencer——
Q. What did you say; a barber?
A. A man by the name of Beeler.
Q. Who is he?
A. He is a saloon man.
Q. Who is the other man, Knight?
A. He is a saloon man, too.
Q. Who else?
1173 A. Well, I could hardly enumerate them.
Q. Those are his principal associates, are they?
A. There is a great many people in Chattanooga that are acquainted with him.
Q. I was asking for his intimate friends and his associates.
A. Well, I couldn't say who his immediate associates are, with the exception of the general business men that is in that business.

Q. You mean generally the saloon keepers; is that what you mean?
A. Yes, sir; and the people that are generally around.
Q. The people that come in and get drinks?
A. Yes, sir.
Q. And besides the two that you have mentioned you do not think of anybody at this present time, by name; is that the idea?
A. No; I don't know that I do, that are his personal associates.
Q. It is a part of Mr. Williams' reputation that he killed a man once, is it not?
A. Yes, sir; I understood that he did.
Q. Have you ever heard of any other trouble he had of that kind? Did he ever have any other trouble?
A. None that I ever heard of.

Redirect examination by Mr. CHAMLEE:

1174 Q. Mr. Spencer, did you know or hear what the result of that trial was?
A. Yes; I understood that he was acquitted. In fact, I see it from the report of the court that he was acquitted of the charge.
Q. Some colored man was running at him with a knife and Mr. Williams shot him in self-defense?
A. Self-defense; yes, sir.
Mr. SANFORD. I object to the question as to the nature of the evidence in the case, other than the fact of acquittal.

By Mr. CHAMLEE:

Q. Anyway, he was acquitted; you know that fact?
A. Yes, sir.
Q. And he has been going ahead and attending to his business ever since?
A. Yes, sir.

B. A. CLOSE, a witness produced on behalf of the defendant Luther Williams, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Close, are you acquainted with the defendant, Luther Williams?
A. I am.
Q. How long have you known him?
1175 A. I would think about 2½ years.
Q. Are you in business in Chattanooga?
A. I am.
Q. What business are you in, Mr. Close?
A. The furniture business.
Q. Where is your place of business at this time?
A. 534 Market street.
Q. Were you ever in business on Market street near Mr. Williams' place of business?

A. We were.

Q. How long were you in business near him?

A. As well as I can recall it now, something like two years, possibly a little over. I am not positive about the length of time.

Q. How far was his place of business from your place?

A. I think about three or four doors, or something like that, between our places.

Q. They were close together?

A. Yes, sir.

Q. How far is your place of business from his now, at this time?

A. Just a block; one street intervening.

Q. And how wide, in feet or yards, are those blocks; 100 yards or 300 feet to a block, or something like that?

A. Well, my idea of measurement is not very good.

Mr. SANFORD. It is just a city block, is it not?

Mr. CHAMLEE. Yes.

By Mr. CHAMLEE:

Q. It is just a city block; that is what you mean?

1176 A. Yes, sir.

Q. Now, Mr. Close, do you think you know the general reputation and character of Mr. Williams in Chattanooga?

A. I think I do; yes, sir.

Q. Is that general reputation and character good or bad?

A. It is good.

Q. From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A. I think so.

Cross-examination by Mr. SANFORD:

Q. How long have you known him, Mr. Close?

A. I think about two years and a half.

Q. You have been in the furniture business all that time?

A. Yes, sir.

Q. What other business have you ever been in besides the furniture business?

A. I was in the grocery business.

Q. What kind of groceries?

A. Family groceries.

Q. Where was your store located?

A. At the corner of 6th and Chestnut, in Chattanooga.

Q. How long have you lived in Chattanooga?

A. Well, the last time I have been here has been, I think, about 4½ or 5 years.

1177 Q. Have you ever been in any other business besides that?

A. Yes, sir.

Q. What other business have you been in?

A. Well, do you want me to give you a kind of biographical sketch of my life?

Q. I would just like to know what business you have been in; that is all. You need not give dates.

A. Well, I commenced my life by teaching school. Following that I was in the grocery business in Chattanooga.

Q. This same family grocery business you speak of?

A. Not the same one; another. Following that I was on the road for several years selling goods for Trotter Brothers—Peeples & Trotter, it was then; following that it was Trotter Brothers. Following that I went with the Peoples Tobacco Company, St. Louis, and was with those people about a year. Following that I was with P. Lorillard & Company, Jersey City. I stayed there something like three years. Then I came to Chattanooga and was in the grocery business 18 months, I would say. Then I left there and went with the Turner Lupe people, Cincinnati.

Q. Who are they?

A. They are in the cigar business. Following that I came back to Chattanooga and went into the furniture business.

Q. And you have been in that ever since?

A. I have been in that ever since.

Q. Your furniture store is within a block of Luther Williams' saloon?

A. Yes, sir.

1178 Q. What is the name of that saloon?

A. The Rosebud.

Q. How often do you go in there?

A. Well, that is a good hard question for me to answer. Sometimes I go in there once a day, sometimes twice, and sometimes I am not in there for a week or two weeks.

Q. How often do you average going in there?

A. Well, I would judge twice a day.

Q. That is when you see Luther Williams principally, is it not; when you go in there?

A. Well——

Q. Does he tend the bar?

A. Sometimes he does; yes, sir.

Q. And you see him when you go in there to get a drink; or do you go in there to get a drink?

A. Sometimes for that, and sometimes to get a cigar. For a while our closet was not fixed to use, and I used their closet and urinal.

Q. And when you would go in there you would see Luther Williams?

A. Not always; sometimes.

Q. Frequently?

A. Frequently.

Q. Did you see him away from there?

A. Yes; I have seen him going to and coming from home, passing up and down the street, and have seen him standing in the door in passing.

Q. Did you have any business relations with him?

A. Yes, sir.

1179 Q. What were they? Was he a customer of your store?

A. Yes; he bought goods from us.

Q. Does he buy from you now?

A. Well, we haven't an account with him just now, but we have had recently.

Q. He is one of your regular customers?

A. Well, he buys some goods from us; yes, sir.

Q. Do you consider him one of your regular customers?

A. Well, I don't know that we consider him a regular customer. We sell him some goods.

Q. When you see him on the street passing by, do you stop and talk to him? Is he one of your associates?

A. Sometimes I do; yes, sir.

Q. How often do you suppose you stop and talk to him?

A. Oh, not very often. He is a man that doesn't have a very great deal to say.

Q. Do you go around with him outside of business hours at all?

A. No, sir.

Q. Is he an associate of yours?

A. Only in a business way.

Q. Just as a customer?

A. I might say that I have no associates outside of that, because I live outside of the city——

Q. You know what I mean by associates—friends of yours, people that you are intimate with or run around with. He is not in that relation with you, is he?

A. In answering that question I would like to explain that I have very few if any people that I run around with, because I live

1180 out of the city at night and I am always at home, and I usually stay there Sundays; and during the day, when I am in the city, I am in my place of business.

Q. So he is not one of your associates?

A. No, sir; because he is not near enough to me.

Q. Do you know who his associates are?

A. Well, I don't know. I don't see him associating with anybody a great deal. I see him speak to people just about like he does to me.

Q. Those are people who go into the barroom to get a drink?

A. Yes.

Q. Or who go to the water-closet, or go there for some other purpose, as you do?

A. When I have business relations with him that is about the only time I see him.

Q. He is on pleasant relations with the people that go in there to get drinks, I suppose?

A. So far as I know, he is. I have never seen anything to the contrary.

Q. Do you know who he associates with and has dealings or social relations with outside of business hours? Do you know what his habits are outside of business hours?

A. No, sir; I do not.

Q. You do not know the people that he runs with outside of business hours, do you?

A. No; I do not.

Q. Name some of his associates who are there in business hours.

A. What do you mean by associates? As I said, I see
1181 him talk to people very little. All I could name would be the people I see in there and see him talk to. Those are the only people I can name.

Q. Are they people who know his personal habits, who are so intimate with him that they would know what kind of a man he was?

A. Well, I am not able to state that he had anybody that was especially close to him, from what I have seen.

Q. I mean men that would know what kind of a man he was, what his habits were, and what his character was?

A. Well, I would think that any man who would see him every day or so would be in a position to know that, and see him in all kinds of moods and conditions. I could name quite a few people along that line.

Q. Are those men that you have seen in that saloon men who just happen in there, just as you have been in there?

A. Some of them; yes, sir; most of them.

Q. Does he wait on the bar?

A. Sometimes he does.

Q. Now, who have you ever heard talk about Luther Williams and about his character or reputation? Do you ever remember to have heard it discussed?

A. Yes, sir.

Q. Where do you remember hearing it discussed?

A. Well, yesterday evening, for one. After I had been notified that I was wanted here as a witness I heard it discussed. I have heard him spoken of before, along the block there, as being a clever fellow and a nice man.

1182 Q. Who have you heard speak of him? I do not ask you what they said. I ask you who you heard speak of him, and when?

A. Well, there was one or two of the men that were with us; a man by the name of Murphy, as I recollect now, spoke of him as a pleasant, nice man——

Mr. SANFORD. Do not state what he said. I did not call for that. I object to the statement of the witness as to what was said, as not responsive to the question.

By Mr. SANFORD:

Q. You say a man by the name of Murphy. What Murphy is that?

A. A fellow by the name of A. R. Murphy.

Q. When was that?

A. I can't name the date.
Q. Was it recently?
A. It was some time last fall, I think.
Q. Do you remember anybody else you ever heard talk about him?
A. No; I don't know that I do, except since I was summoned here.

1183 LUTHER WILLIAMS, a witness produced on his own behalf, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Is your name Luther Williams?
A. Yes, sir.
Q. Are you one of the defendants in this case?
A. Yes, sir.
Q. Where do you live, Mr. Williams?
A. My residence?
Q. Yes.
A. 214 West 6th street.
Q. In Chattanooga?
A. Yes, sir.
Q. Are you in business in Chattanooga?
A. Yes, sir.
Q. What business are you in?
A. The saloon business.
Q. Where is your saloon located?
A. 630 Market street.
Q. How long have you been living in Chattanooga?
A. I have been living in Chattanooga nearly seven years the last time.
Q. Had you lived in Chattanooga some time previous to that time?
A. When I was real young, I did.
Q. Mr. Williams, do you remember the night that it is said that Ed. Johnson was lynched, on the 19th of March, 1906?

1184 A. Yes, sir.
Q. Where were you that night previous to the lynching?
A. I was tending bar at my saloon.
Q. On Market street?
A. Yes, sir.
Q. What time did you hear, if you did hear, about there being any trouble at the jail?
A. Well, I should judge it was about 9.30.
Q. 9.30 in the evening?
A. Yes, sir.
Q. Did you go up to the jail that night?
A. I did.
Q. Did you close up your saloon?
A. Yes, sir.

Q. When you got to the jail what did you find up there? Did you find anybody?

A. Yes, sir; I found quite a number of people.

Q. About what time was it when you got to the jail; do you know?

A. Well, it was between 9.30 and 10. I don't know the exact time.

Q. Somewhere in the neighborhood of 10 o'clock?

A. Yes, sir.

Q. Did you see anybody doing anything when you got to the jail?

A. Yes, sir; there was quite a number of men with an ax and hammer, I believe, trying to cut the rivets off of the lock on the door.

1185 Q. In other words, the mob was at that time doing something to the jail?

A. Yes, sir.

Q. While that was happening did you go inside of the jail?

A. I did; yes, sir.

Q. What did you see inside, and where did you go?

A. Well, I went through the office of the jail and up, I think, one flight of stairs; I am not positive.

Q. Do you know which floor Johnson was on?

A. If I remember right, the jail is two stories in front and three in the rear, and I think there is one story over the office.

Q. Was Johnson on what we call the second story, the first story above the ground?

A. The third story in the rear, I believe; I am not certain.

Q. When you went up the steps did you see what the crowd was doing that was trying to break into the jail?

A. Yes, sir.

Q. What were they doing?

A. Why, they were hammering on these rivets or bolts.

Q. Was that the circle door?

A. The door that led into the circle door, I believe.

Q. How is that door that leads into the circle door fastened, Mr. Williams? What kind of a door is it?

A. It is a heavy steel bar door, I believe.

Q. Is it a round or flat door—that is, is the shutter round or flat?

A. I think it is flat. I am not certain about that.

1186 Q. When that door is removed then they come to the circle door?

A. Yes, sir.

Q. And when you were there they were working on this outside door?

A. Yes, sir.

Q. How long were you there on that flight of steps that you refer to?

A. I went up the flight of steps. I don't know that I stopped on them. I went up near where they were hammering. I was there a very few minutes—a short time.

Q. Did you see anybody there that you knew?

A. Yes, sir.
Q. Did you see the sheriff?
A. I did.
Q. Where was he?
A. As I went up the steps the sheriff was on the north side; that is, to my right, on the north side of the cells—what they call a hospital cell, I think.
Q. Was there anybody in possession of the sheriff at the time you saw him?
A. Yes, sir; there was several men around him.
Q. What were they doing with him, if anything?
A. Well, I suppose they was trying to keep him from getting away, from the conversation I heard.
Q. Then, did you go down out of the jail?
A. I did; yes, sir.
Q. Did you see Johnson when he was brought out of the jail?
1187 A. I stayed upstairs until they went through the circle and I went downstairs. I wasn't upstairs when they brought him out from the cell. I either seen them with him in the yard or in the office downstairs.
Q. Did you have anything to do with cutting those doors or helping to get Johnson, or lynching him, or anything of that kind?
A. No, sir.
Q. Did you have anything at all to do with it?
A. No, sir.
Q. When you came outside did you see the crowd bring Johnson out?
A. I don't know whether I was in the yard or in the office when they brought Johnson out.
Q. What I want to get at is, did you see Johnson and the crowd come out?
A. Yes, sir.
Q. Did you have anything to do with helping to take him out of the jail or taking him to the bridge?
A. No, sir.
Q. Did you follow the crowd or go along as they went towards the bridge?
A. Yes, sir.
Q. Did you have anything to do with helping to lynch Johnson?
A. No, sir.
Q. Did you have anything to say, or did you aid anybody else in any way in lynching Johnson?
A. No, sir.
1188 Q. Did you see him lynched at the bridge?
A. Yes, sir.
Q. After the lynching was over where did you go?
A. I went to the saloon and checked up the day's sales, and went from there home.
Q. Did you have any pistol? Were you armed in any way?

A. No, sir.

Q. Out at the bridge, after the man had been lynched, did you walk up and shoot five bullets into him?

A. No, sir.

Q. Did you shoot him at all, or have anything to do with shooting him?

A. No, sir.

Q. Did you know anybody else that shot him?

A. No, sir.

Q. How far away were you from Johnson at the time that he was shot?

A. Well, when they hung him up they didn't hang him in the center of the bridge; they hung him more on the east side of the bridge than they did the center, and I was afraid I might get shot myself or hurt, and I got out of the way and got on the west side of the bridge, against the banisters, so that nobody would be behind me.

Q. Was that where you were standing, over against the banisters of the west side of the bridge, at the time Johnson was shot?

A. Yes, sir; when they strung him up.

1189 Q. Mr. Williams, did you know or had you heard previous to this lynching, on that day or any other time previous to this, that there was going to be any lynching of Ed Johnson that night?

A. That night?

Q. Yes.

A. No, sir; not a word.

Q. Did you have anything to do with it, or talk to anybody about getting up a crowd to lynch Johnson, or in any manner or in any way in the world have a thing to do with proposing or getting up this mob to lynch Johnson?

A. No, sir.

Q. Did you have anything to do with the lynching after the mob got him, or help in any way to break the jail, or do anything that would aid in the lynching of Johnson?

A. No, sir.

Q. How came you to go up to the jail at all and to follow this mob, Mr. Williams?

A. Well, I was in the saloon at work, and some one came to the rear end of the saloon and asked me why I wasn't up to the jail; and I asked him——

Q. I did not ask you for any of the conversation.

A. Some one came to the rear of the saloon and notified me that there was a mob up at the jail.

Q. What I was asking about was whether or not you went up to the jail for the purpose of helping lynch Ed Johnson or for some other reason.

A. Well, it was natural to go to a thing of that kind if you heard of it—as a spectator.

1190 Q. Were you there at the jail and at the bridge, where the lynching occurred, simply as a spectator?

A. Yes, sir.

Q. I will ask you to state whether or not you went there for the purpose of taking any part or having any hand whatever in the lynching of Ed Johnson?

A. No, sir.

Q. Did you have any mask on, or were you in any way disguised?

A. No, sir.

Q. You spoke about seeing the sheriff. Were you acquainted with the sheriff previous to that time?

A. Well, I knew the sheriff by sight, the same as any other citizen did, and probably had spoken to him; but I don't think the sheriff knew me.

Cross-examination by Mr. SANFORD:

Q. What time do you say it was that that man came to the rear door of your saloon?

A. I think it was about 9.30.

Q. Who was that man?

A. I don't know, sir.

Q. Was it a man or boy?

A. It was a man.

Q. What sort of a looking man?

A. Well, I couldn't say that I could describe the man.

Q. Did he come into your saloon?

1191 A. The first I seen of him he was coming towards the rear of the house.

Q. Have you a regular rear entrance to your saloon?

A. Yes, sir.

Q. Did he come up in the light?

A. Yes, sir; the house was lit.

Q. How old a man was he?

A. I couldn't tell you.

Q. Was he a large or a small man?

A. Well, I never paid any particular attention to him.

Q. Was he a man you knew before?

A. I don't know that I did.

Q. Did he call you by name?

A. I don't remember whether he did nor not.

Q. How did he happen to notify you; do you know?

A. Well, I don't know that; no, sir.

Q. He notified you that the lynching was going on up at the jail?

A. Yes, sir.

Q. Who was in the saloon there at that time?

A. I don't know. I didn't have any reason to remember, and never thought anything of it.

Q. You do not remember anybody else that was in there?

A. No, sir; I don't.

Q. And you do not know the man that came for you?

A. No, sir. He didn't come for me that I know of. He just mentioned it to me.

Q. Did you close your saloon at once?

1192 A. Well, not at once. I closed in a very few minutes, because everybody left there about that time.

Q. Did you close up yourself?

A. Yes, sir.

Q. What became of your bartender?

A. I was tending bar alone that night.

Q. What time did you close your bar?

A. That night?

Q. Yes.

A. Between 9.30 and 10.

Q. How far was your place from the jail?

A. Well, if you go through the front of the saloon, as I did, to the front of the jail, it is about three blocks.

Q. How long did it take you to get up there?

A. Well, I don't suppose it took me over four or five minutes.

Q. Did you walk or run?

A. Well, I judge I went rather fast. I don't remember my gait, but I think I did.

Q. Who went with you?

A. I don't remember anyone that went with me.

Q. Did you go alone?

A. I never thought anyone did, till some time ago, when a party mentioned going part of the way with me; but I don't remember him going with me.

Q. You do not remember anybody going with you?

A. No, sir.

Q. When you got to the jail were there people outside?

A. Some outside; yes, sir.

1193 Q. Across the street, up against the stone wall, looking on?

A. I seen some people out in the street, and a few in the yard. I know there was people all around.

Q. There were people all around there?

A. Yes, sir.

Q. And you went on in?

A. Yes, sir.

Q. Did you see anybody in the lobby, or in the office, there on the right-hand side.

A. I don't remember whether I seen anyone down there or not. I know there was a number standing on the stairs that led from the lobby.

Q. Who did you see standing on the stairs?

A. I don't know their names at all.

Q. Who did you see downstairs, after it got light so that you could recognize them?

A. I didn't recognize anyone down stairs at all. I don't remember whether there was people down there at all, but I think there was.

Q. Did you speak to anybody?

A. I remember saying, "How do you do?"

Q. Who did you say "How do you do" to?

A. Dr. Sutton.
Q. Was that downstairs or upstairs?
A. That was upstairs.
Q. Dr. Sutton was upstairs, was he?
A. Yes, sir.
1194 Q. Did he go into the cell when they went to get Ed Johnson?
A. Yes, sir.
Q. Who did he go in with?
A. I don't know who they were. They were strangers to me.
Q. What sort of a looking fellow was it?
A. I couldn't say.
Q. Where was the door that they were battering down? Was there a door between the office and the jail? There was a door right before you started up the steps, was there not?
A. I understood that door had been tore down.
Q. Was it open? It was not there when you got there?
A. It was open.
Q. And how or when it was opened you do not know?
A. No, sir. I will tell you what I know about that door if you like.
Q. If you remember it was open that is all I ask you.
A. Yes.
Q. Then you went on up one flight of stairs?
A. I think it was one flight of stairs.
Q. To where the lynchers were, upstairs?
A. Yes, sir.
Q. How many of them were there?
A. How many men?
Q. Yes.
A. There was quite a large number of them up there.
Q. How many of them were actually doing the work of
1195 breaking down the door?
A. Well, there couldn't over two or three men work at that at one time.
Q. Were there other men in there just like you, that were bystanders or spectators?
A. There were other men I didn't see do anything.
Q. They had gone there just like you, as spectators, so far as you know?
A. Possibly.
Q. Who were the men that were standing near Sheriff Shipp?
A. I didn't know them.
Q. You did not recognize any of them?
A. No, sir.
Q. Did you recognize anybody up there besides Dr. Sutton?
A. I recognized Jailer Gibson, Sheriff Shipp and Dr. Sutton. Those are the only people that I know the names of.
Q. Did you hear any other names called there at that time?
A. No, sir; I don't believe I did.
Q. What is your recollection about it?

A. I don't remember hearing any names called except Sheriff Shipp's name.

Q. You knew Sheriff Shipp?

A. I knew him by sight; yes, sir.

Q. Did he ever belong to any order that you belonged to?

A. None that I know of.

1196 Q. Or any lodge, society, or organization?

A. No, sir.

Q. You knew him by sight?

A. Yes, sir.

Q. And you can not remember or did not recognize anybody else in there except Dr. Sutton, Sheriff Shipp, and Jailer Gibson. Is that your statement?

A. I remember seeing a man that worked at the Times, but I don't know his name.

Q. Was it Chivington?

A. No, sir.

Q. Curtis?

A. No, sir.

Q. Pritchard?

A. I didn't see Mr. Pritchard at the jail; no, sir.

Q. Did you see anybody else in there that you knew?

A. Not that I knew; no, sir.

Q. You did not see anybody else?

A. No, sir.

Q. How long did you stay up there?

A. Well, I was only there a few minutes They got the cell broke n shortly after I got there, in a very few minutes after.

Q. Did you talk to any of these other men up there?

A. No, sir.

Q. Whom did you talk to there that night?

A. I don't know as I talked to anyone.

Q. You went upstairs and came out and did not talk to anybody?

1197 A. No, sir.

Q. What did you do when you came out?

A. Well, when I left upstairs they was going through the circle o get this prisoner and I went downstairs, and when they came out nd went on with him I followed the crowd.

Q. Do you know how Dr. Sutton happened to go in the cell?

A. Well, at that time I thought I knew.

Q. Did you hear him say?

A. Yes, sir.

Q. How many men went into the cell with him?

A. Well, I don't remember. I think there were three or four?

Q. When you came out, had they got Johnson out of the cell?

A. Had they got him out?

Q. Yes.

A. No, sir; they had just got in the circle when I came out.
Q. Did you come down with anybody?
A. I don't think anyone came down with me.
Q. You had seen Sutton go into the cell?
A. Yes, sir.
Q. And with these other two or three men?
A. Yes, sir.
Q. You saw that?
A. Yes, sir.

Q. How long did it take them to get him out of the cell?
1198 A. Well, it didn't take very long. I was downstairs.

Q. How far behind you were they, the rest of them, when they came down with him?
A. I didn't see them come out of the circle.
Q. When they came downstairs?
A. I don't remember whether I was standing in the office of the jail or in the yard when they came out with him. It was a very short time, though.
Q. Was there anybody in the office?
A. I don't remember whether there was or not.
Q. You did not speak to anybody in the office?
A. No, sir.
Q. Did you speak to anybody out in the yard?
A. I don't think so.
Q. Then what did you do, when they came down with Ed Johnson?
A. I went on to the bridge with the crowd.
Q. Did you wait until they passed you?
A. Yes, sir.
Q. Who had hold of him?
A. I don't know, sir; several.
Q. Several of them?
A. Yes, sir.
Q. Did you see them?
A. Why, I seen they were men; yes, sir.
Q. How close were you to them?
A. Well, I was only a very few feet from them when they passed me.

Q. Did you recognize any of them?
1199 A. No, sir.

Q. Then, you say, you followed on after them to the bridge?
A. Yes, sir.
Q. Did you talk with anybody as you went along?
A. I don't believe I did.
Q. There was a crowd following on, was there not?
A. Yes, sir.
Q. Did you go by yourself all the way?
A. Well, there was people all around me.
Q. I mean, you did not talk to anybody?
A. No, sir.

Q. You just went entirely by yourself all the way?

A. I don't think I spoke to anyone.

Q. When you got to the bridge there was a crowd around there, was there not?

A. There was.

Q. There were the lynchers that had him in charge, and then there were other men standing all around, bystanders just like yourself?

A. Yes, sir.

Q. There were other men there, were there not?

A. Yes, sir.

Q. Did you speak to any of these other men?

A. Well, I don't know what kind of a conversation I had, if any. It was natural for a person to speak or make some remark in a crowd of that kind.

Q. Do you remember speaking to any living soul down there?

1200 A. No, sir; I don't remember.

Q. Did you see the man that knocked down Bob Pritchard?

A. No; I didn't see it. I only heard that.

Q. Who did you hear say anything about that?

A. I didn't hear, only what I have heard on the stand here.

Q. I am not asking for that. I am asking for anything you heard that night.

A. Not at that time, I didn't; no, sir.

Q. Did you hear the names of any of those lynchers while you were there that night?

A. No, sir.

Q. Did not somebody say, "There goes So-and-so," giving his name?

A. I didn't hear it.

Q. Can you remember a single person that you saw there that night on that bridge?

A. Bob Pritchard is the only one I remember of seeing.

Q. You saw Bob Pritchard on the bridge?

A. Yes, sir; I saw him.

Q. You did not see anybody else?

A. Not that I knew; no, sir.

Q. You did not see anybody else that you knew on the bridge?

A. No, sir.

Q. Where was Bob Pritchard?

A. Well, I don't know what place to tell you he was in. He was on the bridge near the negro is all I can tell you.

Q. How far from him?

1201 A. Well, he wasn't very far.

Q. He was a reporter on the Times at that time?

A. He was a reporter on some paper; yes, sir.

Q. At the time he was knocked down did you see him knocked down and not recognize the man, or simply did not see him knocked down?

A. I didn't see him hit at all. I understand he was hit.

Q. Who told you he was hit?

A. I don't know whether I heard it that night or not. I am not certain; I believe I did.

Q. Who did you come back with?

A. I don't think I came back with anyone.

Q. You came back by yourself?

A. I think so.

Q. Are you a married man?

A. Yes, sir.

Q. Where were you living at that time?

A. 15 East Terrace.

Q. How far is that from your saloon?

A. I wouldn't know how to count the blocks, but I think it is about six or seven blocks from my saloon.

Q. How long have you been in the saloon business?

A. In Chattanooga, seven years this fall.

Q. Have you ever been in the saloon business anywhere else?

A. Well I have tended bar elsewhere, but not in Chattanooga.

Q. Where?

1202 A. Montana.

Q. How many years?

A. One winter; six or seven months.

Q. In Montana?

A. Yes, sir.

Q. Have you tended bar for anybody here besides yourself? You have been in two bars, have you not?

A. I have been in three bars for myself here.

Q. Where were they?

A. I was at 2d and Walnut nearly three years; at 13 West 8th street one year; in my present location about two years and a half.

Q. What were their names? One was the Rosebud?

A. That was the only one that was named.

Q. That is the only one that had a name?

A. Yes, sir.

Q. And you tended bar part of the time at all those saloons?

A. Yes, sir.

Q. Did you tend bar for anybody else?

A. I tended bar for Ed Ransom at 838 Market street for three weeks, while the bartender was sick, once.

Q. Is it true that you killed a man once?

A. Yes, sir.

Q. A negro?

A. Yes, sir.

Q. Did you ever have any other personal difficulty with anybody?

1203 A. Oh, I have had little scraps the same as most any man will have, but nothing——

Q. Nothing of a serious nature?

A. Not of a serious nature; no, sir.

Q. Have you ever been arrested for anything else?

A. I have been arrested for gaming a few times?
Q. How many times have you been arrested for gaming?
A. Well, I don't know exactly; three or four or five times.
Q. Have you ever been arrested for anything else?
A. No, sir; gaming and for one or two fights.
Q. Who did you have a fight with? What fights were you arrested for?
A. Well, Henry Padgett, a defendant in this case, had me arrested once; and there was a negro porter had me arrested once. Those are the only two.
Q. And this other case that you mentioned?
A. This murder case that you spoke of; yes, sir.
Q. Have you ever been indicted for anything else?
A. Well, in connection with that murder case I was indicted for carrying a pistol.
Q. Was this murder case in Chattanooga or out West?
A. Chattanooga.
Q. Were you indicted out West for anything?
A. I never was. I was never arrested anywhere but in Chattanooga.

Redirect examination by Mr. CHAMLEE:

1204 Q. Mr. Williams, I will ask you to state whether or not you were tried by a jury of twelve men in this county under the charge of murder referred to in your cross-examination?
A. I was.
Q. And were you acquitted by that jury?
A. I was.
Q. After a full hearing of the evidence?
A. Yes, sir.

Recross-examination by Mr. SANFORD:

Q. Was the man that you killed a white man?
A. No, sir.
Q. A negro?
A. Yes, sir.

Mr. CLIFT. If the court please, and Mr. Attorney-General, I may want to ask this witness a question later, but not to-day.

Mr. SANFORD. That will be all right; any time before the proof closes, just as if you had examined him now.

Mr. CHAMLEE. I believe it is about adjourning time, and we will ask for a recess until 2 o'clock, if that suits the attorney-general.

Mr. SANFORD. It will suit me; but have you any more witnesses?

Mr. CHAMLEE. I have some more, but I want to take up another case at 2 o'clock.

1205 Mr. SANFORD. That is all right.

The COMMISSIONER. We will take a recess until 2 o'clock.

Mr. CHAMLEE. I am not closing as to Mr. Williams.

Mr. SANFORD. I understand.

(Thereupon, at 12.30 p. m., a recess was taken until 2 o'clock p. m.)

1206 *After recess.*

(The hearing was resumed at the expiration of the recess.)

Mr. SANFORD. I would like to have Mr. Barnes recalled before you get through.

Mr. CHAMLEE. Mr. W. P. Barnes?

Mr. SANFORD. The saloon-keeper.

Mr. CHAMLEE. He is Mr. Hood's witness, and his office is a little way down here. I was simply associated with him for Mr. Ward, but he was Mr. Hood's witness.

Mr. SANFORD. I would like to have Mr. Barnes recalled, Mr. Hood.

Mr. HOOD. I will try to get him down here this afternoon.

Mr. CHAMLEE. Now, if your honor please, we will take up the case of the Government against Frank Jones, deputy sheriff.

The COMMISSIONER. If there are any witnesses present they will resite from the room.

Testimony on behalf of the defendant Frank Jones.

* * * * * * *

1214 FRANK M. JONES, a witness produced on behalf of the defendant Frank Jones, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Jones, are you one of the defendants in this case?

A. I am.

Q. Talk up so the judge can hear you. Were you a deputy sheriff in March, 1906, in this county?

A. I was.

Q. Were you working at that time on fees or on a salary?

A. I was working on fees.

Q. By working on fees you mean that a man is paid so much for each arrest and so much for guarding the jail, and

1215 that is how he gets his compensation?

A. Yes, sir.

Q. And so much for summoning witnesses?

A. Yes, sir.

Q. That is what is understood by a fee deputy; and the salaried men are paid so much a month by the sheriff?

A. Yes.

Q. You were working on fees at that time?

A. I was.

Q. Have you worked on fees all the time, since you have been a deputy?

A. For about three months, I believe, I was night jailer. I got a salary for what time I was there. The rest of the time I was on fees.

Q. Do you remember the night Ed. Johnson was lynched at the bridge, in Chattanooga?

A. I do.

Q. Were you working on fees at that time?

A. I was.

Q. What justice of the peace were you working before at that time?

A. Squire Boone.

Q. Did you arrest any prisoner on that day, or that evening?

A. I did.

Q. Who was he?

A. Steve Turner.

Q. Where did you make that arrest?

1216 A. I arrested him near the corner of Montgomery and Cowart street.

Q. Was that in Chattanooga?

A. Yes, sir.

Q. What part of Chattanooga was that?

A. That is what is known as South Chattanooga.

Q. When you arrested him where did you carry the prisoner?

A. I taken him to Squire Boone's office.

Q. Where is his office located?

A. His office is just back of the bank, on the corner of Market and Montgomery, just in the rear of the bank. There is a vacant lot between the bank and his office. His office was upstairs.

Q. That is Montgomery avenue, in South Chattanooga?

A. Yes, sir.

Q. About how far is that from the county jail?

A. I would take it to be somewhere in the neighborhood of three-quarters of a mile, and maybe more.

Q. Did the justice of the peace that you carried this man before issue any orders relative to what should be done with the prisoner for the night?

A. I held the prisoner there—I didn't hold him there. He tried over the phone for some little time to get somebody to go his bond.

Q. That is, the defendant was trying to reach some of his friends.

A. Yes, sir.

1217 Q. He did not reach any?

A. He failed to reach any, and the squire give me a mittimus and I started to the jail with him.

Q. A mittimus. Is that what you mean by the order the justice of the peace issues to commit a man to jail?

A. Yes, sir.

Q. That is what they call the order in Tennessee—a mittimus?

A. Yes, sir.

Q. Did you take your man and start to the jail with him?

A. I did.

Q. How did you travel from the justice of the peace's office to the jail?

A. I walked.

Q. When you got to the jail did you put your man in jail?

A. I did not.

Q. What kept you from putting your man in jail?

A. When I got to the corner of Seventh and Walnut street I seen quite a crowd standing out in front of the jail there; and I didn't know but what there was a guard called back to the jail again, and I came up to there. These people were standing back from the gate, and I went on up to the door. When I got to the door——

Q. When you refer to the door, you mean the front door of the jail?

A. Yes, sir; as you come up from the sidewalk. There was a man standing at the door with an axe——

1218 Q. You mean a chopping axe, that they cut wood with?

A. Yes, sir. Just in the rear of him was a man with a rifle, and some others in there, maybe two or three more. And I noticed as I passed by the window in the office—that is where the telephone is—there was some three or four in there. I couldn't state exactly. When I got to the door there was a man stepped up and he says, "What do you want here?" I says, "I want to put my prisoner in jail." He says, "You can't put him in here." He says, "There is nobody here but us, and we have full charge; and if you want to live," he says, "you better get away with your man." He says: "If you don't we will get you and him too."

Q. What else happened? What else was said?

A. After he said that I turned and started out with my prisoner. As I started out a fellow grabbed hold of him, and said "Let's take him anyhow." I says "No, you won't. You won't take him without you take me."

Q. Did you make the man turn your prisoner loose?

A. I did.

Q. Did you get him out and away from the jail?

A. I did.

Q. Where did you carry him to?

A. I taken him to police headquarters.

Q. Is that the city jail, for the city of Chattanooga?

A. Yes, sir.

Q. What did you do with him there?

A. I turned him over to the sergeant, and he locked him up.

1219 I asked him to keep him there for me until I called for him.

Q. The next day?

A. Yes, sir.

Q. Did they lock your man up in the police jail?

A. Yes, sir; they did.

Q. About what time of the night was that, if you remember?

A. I don't remember positively. It was somewhere in the neighborhood of nine o'clock.

Q. When you got to the police jail with him?

A. Yes, sir. I don't remember looking at the time. It was somewhere in the neighborhood of 9 o'clock.

Q. After you got this man in the police jail, that ended your connection with the prisoner for the evening?

A. Yes, sir.

Q. When you were at the county jail did you see Sheriff Shipp?

A. I did not.

Q. Or any of the deputies?

A. No, sir; I did not.

Q. About how far is it from the county jail to the police court jail?

A. Well, I would have to count the blocks. It is about three blocks, I should judge.

Q. Who did you find at police headquarters—at the police jail?

A. The night jailer.

Q. What is his name?

1220 A. Hogan.

Q. What do you say the night man's name was at the police jail?

A. Hogan.

Q. Did you see anybody else there at the jail besides the night man?

A. I did not.

Q. Then where did you go from there?

A. I went from there to Squire Montgomery's office on 9th street.

Q. Is that close to the police station?

A. Yes, sir; within a block.

Q. Did you make any effort there to communicate with the sheriff?

A. No, sir; I was looking for some assistance, help; and there was no one there. The office was dark. I went from there about four or five doors below to Squire Ware's office and there was no one there. Then I happened to think that I had heard of Mr. Frawley sometimes taking lunch down on 9th street, and I went down to the restaurant to see if he was there. He wasn't there, and I telephoned to Mr. Frawley's home, and who I taken it to be his brother answered the phone, and I asked where Fred was.

Mr. SANFORD. I object to any statement of that sort.

By Mr. CHAMLEE:

Q. You need not tell about anything they said. I want to find out if you made an effort to locate some of the deputies or the

1221 sheriff. Did you telephone to the sheriff's residence?

A. I did.

Q. How long was it from the time you turned your prisoner over at the police jail until you called up his residence?

A. As quick as I could make that round, going as fast as I could. I couldn't state as to the time positively.

Q. Did you reach the sheriff?

A. No, sir; someone answered the phone and said——

Mr. SANFORD. I object to that as hearsay and incompetent.

By Mr. CHAMLEE:

Q. You telephoned to his house?

A. Yes.

Q. Who was it that answered—a man or a woman?

A. It was a lady's voice.

Q. After you had gone to the restaurant trying to find Mr. Frawley, or where you thought you would find him, then did you go to the county jail?

A. I went from there direct back to the jail.

Q. When you got to the jail had the mob left there before you got there?

A. Yes, sir. As I got near to the jail I heard the firing in the direction of the bridge.

Q. Then did you go on up to the bridge?

A. In some little time a car came along and I caught the car and went out to the bridge.

1222 Q. Was there anybody along on that same car you were on?

A. Quite a number got on there in front of the jail.

Q. Going that way?

A. Yes, sir.

Q. Did you finally go up to the bridge?

A. Yes, sir; I did.

Q. Did you see anything of the mob when you got there?

A. No, sir; I did not.

Q. Did you find the body of Johnson?

A. Yes, sir.

Q. Were you there somewhere, or anywhere near there, when the ambulance went after the body?

A. No, sir; I was not.

Q. You were not there when Mr. Boydston telephoned about the ambulance?

A. No, sir.

Q. Mr. Jones, did you know anything about the fact that there was going to be any lynching that night?

A. I did not.

Q. Had you had any intimation or knowledge, or heard of any talk about there being any proposition of anyone to lynch Ed. Johnson that night?

A. I had not.

Q. Previous to this time, that is, previous to the time of the lynching, state whether or not public feeling relative to the crime with which Johnson was charged had quieted down, and everything

1223 appeared to be in the usual orderly condition in this community?

Mr. SANFORD. I object to that question as leading.

By Mr. CHAMLEE:

Q. Go ahead and tell about it.

A. It had.

Q. Did you aid or assist anybody, either by word or action, anywhere, in organizing a posse or in doing any act towards the lynching of Ed. Johnson?

A. I did not.

Q. Did you have any knowledge or information——

A. I had not.

Q. (Continuing.) Relative to there being any intention on the part of any other persons to lynch Ed. Johnson?

A. I had not.

Cross-examination by Mr. SANFORD:

Q. How long had you been a deputy?

A. I was first appointed as a special deputy sheriff on the same day the sheriff was sworn in office. My home is out about eleven miles east of the city, and some time after that he put me on as a regular deputy. I do not remember the exact date now.

Q. Were you one of the deputies that had been staying there at night guarding Ed. Johnson?

A. Before this lynching; yes, sir.

Q. You were?

1224 A. Yes, sir.

Q. Who else has stayed there with you?

A. Most all the deputies.

Q. Most all the deputies?

A. Yes, sir. I think they was all there, off and on.

Q. Off and on?

A. Yes, sir.

Q. When was the last night you had stayed there yourself?

A. It was some time before this lynching. I don't remember the date.

Q. Ed. Johnson had been up at Knoxville, had he not?

A. Yes.

Q. They had taken him away up to Knoxville?

A. Yes, sir.

Q. Do you remember the last night you were there guarding him? Can you give it exactly?

A. No, sir; I can not.

Q. He had been convicted and sentenced to be hung, had he not?

A. Yes; he had.

Q. And there had been an application made to Judge Clark, and he had denied it?

A. Yes, sir.

Q. And said that he would not make any order?

A. Yes, sir.

1225 Q. Up to the time it had been definitely settled—up to the time Ed. Johnson had been convicted and the date of the

execution fixed upon—there had been a great deal of public excitement about it and danger of lynching of Ed. Johnson?

A. I did not understand the question.

Q. Up to the time Ed. Johnson had been convicted and a date set for hanging him by law, had there not been a great deal of danger and apprehension of his lynching?

A. When he was first arrested there was a good deal of excitement, but up to the time after he was convicted—I am only speaking for myself—I thought he was going to be hung on the following day; but I heard of no excitement up to a time prior to this lynching.

Q. I say, up to the time he was convicted. The danger arose from the fact that it was feared there would be a delay in the matter, did it not? And they were afraid that if there was a delay in the hanging of Johnson the lawless element would lynch him. Is not that so?

A. Well, I suppose that is so; yes.

Q. You know that was the fact?

A. Yes.

Q. That was what the fear was. Was not that true that the people were afraid if Ed. Johnson was not executed quickly, and if there was a delay about it, the lawless element would lynch him or try to lynch him?

A. I suppose they taken it that way, but I would not.

Q. You understood there was danger that they would do that?

1226 A. No, sir; I didn't understand that.

Q. What was the reason of all those guards up to the time he was convicted?

A. That was during this excitement when he was there before this trial, and during the trial.

Q. And just as soon as it was fixed that he was convicted and was to be executed on a certain day, then the excitement died down?

A. Yes, sir.

Q. Because it was thought then that he was certainly going to be hung on that day?

A. Yes, sir.

Q. Had not the original trouble been because they were afraid there would be a delay in hanging him? Was not that what made the real fear that he would be lynched, because of the delay? The mob did not want any delay about it? Is not that so?

A. Yes; I suppose that is the way the mob taken it.

Q. You understood that was the way the mob took it. When it was announced that on account of the appeal to the Supreme Court there was going to be another delay, did not that bring about danger that the mob would take it into their hands again?

A. I didn't know about this delay until the next morning, when I seen it in the morning's Times.

Q. You did not there had been any delay?

A. No, sir.

1227 Q. If you had known there had been a delay, and you had known the Supreme Court had made an order that was going to delay the case, from what you knew of the lawless element in town at that time, would you not have been afraid there was going to be an attempt to lynch him—if you had known about the order of the Supreme Court?

A. No, sir; I wouldn't take it that way. Everything was perfectly quiet.

Q. Everything had been perfectly quiet because they expected him to be hung on the next Tuesday. If you had known there was going to be another delay, and it was going to be put off for months, or for a long time, from what you knew of the mob spirit, would you not have been afraid of another attempt to lynch him? You did not know about the order of the Supreme Court, but if you had known about it would you not have been afraid of that?

A. I don't know that I could say I would.

Q. Can you say you would not?

A. No, I would not; not to be positive either way.

Q. When were you in the jail that day, the day of the lynching?

A. The day of the lynching?

Q. The day of the lynching.

A. I wasn't there during the day until I went there with the prisoner that night.

Q. You had not been to the jail that day?

A. No, sir; I had been out to my home in the morning.

1228 I went out Friday to my home, and got in town about 1 o'clock, I guess, on Monday. I was out on Montgomery avenue during that day. The first business I had had at the jail was taking that prisoner that night.

Q. You had been away since Friday, until you got back about 1 o'clock Monday afternoon?

A. Yes, sir.

Q. And you did not know what had been done?

A. No, sir.

Q. You had not been to the jail?

A. No, sir.

Q. What were you doing on Montgomery avenue?

A. That is where Squire Boone is.

Q. You were not at the jail that day?

A. Not until that night.

Q. What time that night was it you went there?

A. In the neighborhood of 9 o'clock. I couldn't say positively.

Q. How do you fix that time?

A. From the fact of going there while this mob was in session, and then the paper next morning stating it.

Q. Did it state the time you had been there?

A. No; not the time I had been there; but that this man Johnson was taken out.

Q. Then, as a matter of fact, aside from what the paper said next morning, you do not know what time you went there that night?

A. The reason I know is because as quick as I could go
1229 from the county jail to the city jail and make these other rounds I have just spoken of and get back, the mob had left and the firing was taking place on the bridge.

Q. You do not know of your own knowledge the time the mob hung him, do you?

A. It was in the neighborhood of ten o'clock.

Q. Do you know that of your own knowledge, or from what you heard? Did you look at your watch?

A. No, sir; I say I don't know the time positively.

Q. You can not locate exactly the time you went to the jail?

A. Not positively.

Q. Who were the men you saw at the door when you went in?

A. I don't know them. They were disguised.

Q. You did not know any one of them?

A. No, sir.

Q. How far in did you get that night?

A. Only to the door.

Q. Which door?

A. In front of Walnut street, leading from the sidewalk into the jail, leading into the jail proper.

Q. You did not go into the jail?

A. No, sir.

Q. Did you go into the office?

A. No, sir.

Q. You did not go in the front door?

A. No, sir; they stopped me at the door.

1230 Q. Did you see the sheriff around there?

A. I did not.

Q. Did you see any deputies around there?

A. I did not.

Q. Did you enquire for the sheriff there?

A. They told me——

Q. I did not ask what they told you. Did you make any inquiry for the sheriff?

A. No, sir; I did not.

Q. Did you see Fred Frawley there that night around the jail?

A. Not until after this was over.

Q. But the first time you went there did you see Fred Frawley?

A. No, sir.

Q. Did you see anybody there, except the two or three men that met you at the door?

A. A number of people was on the sidewalk.

Q. Was there anybody in the yard?

A. I don't believe there was. I am not sure. I don't remember of seeing any.

Q. Where were the people on the sidewalk; along the fence?

A. Yes.

Q. Were there people across the street, up against the stone wall?

A. I don't remember seeing anyone over there.

Q. Did you look over there?

1231 A. I can't say that I did.

Q. Did you call on any of those bystanders to help you?

A. No, sir; I did not.

Q. Did you try to summon a posse there at all?

A. No, sir.

Q. You did not?

A. No, sir; I did not. I had this prisoner. I had this prisoner, and I wanted to get shut of him as quick as I could so I could do something.

Q. I wish you would describe the man who had the gun.

A. He was a tall man; a tall, slender man.

Q. A tall, slim man?

A. Yes; what I call a slender man—a tall, slender man.

Q. How much would he weigh?

A. I would judge him to weigh about one hundred and forty pounds.

Q. Did he have black hair?

A. I didn't see his hair. He had a disguise. It looked to be a white rag or a handkerchief to his eyes here and tied back around that way [indicating], and he had his hat on.

Q. What kind of a looking man was it that had the ax?

A. He was a very low man.

Q. Was he heavy or middle sized?

1232 A. What attracted my attention to him was when I stood up on the top step leading into the jail he struck me about the shoulder—his face would strike me about the shoulder.

Q. How tall are you?

A. I am about five foot nine and a half, I guess.

Q. He was five or six inches lower than you, you mean?

A. Yes; maybe lower than that.

Q. Was he thick set?

A. I didn't notice about that. That is what attracted my attention—was his height.

Q. What was the color of his hair?

A. I didn't see his hair. He had a disguise the same as the others.

Q. A handkerchief over his face?

A. Yes, sir.

Q. You took him to be a little over five feet high?

A. Yes, sir; he mustn't have been over five feet one or two inches, if he was that.

Q. Was he slim or thick set?

A. I couldn't say as to that. He was standing just aside of the door with that ax in his hand, in this way [indicating], in somewhat of a drawn position, holding the ax out this way [indicating] in a drawn position. I didn't pay any attention to his build.

Q. Did you hear any knocking or noise inside at that time?

A. I heard somebody walking upstairs. I couldn't tell
1233 how many were there, but I heard walking upstairs.

Q. There were a good many people there; quite a number of people there at the time?

A. Yes, sir.

Q. Who did you see there?

A. I remember seeing Mr. Galloway. In fact, he got on the car and went out on the same car I did.

Q. Deputy Sheriff Galloway?

A. Yes, sir.

Q. Where did Galloway meet you?

A. I never seen him until I got back to the jail there after the lynching. That was the first time I seen him.

Q. Who else did you see out there?

A. I seen Squire Ware, and I seen, on leaving the bridge and coming back this way, Mr. Boydston. I don't remember all the people I seen. There is quite a number of faces I remember seeing, but I don't remember the names now.

Q. Had there been any trouble there? Any shooting at the lynchers from down in the bushes at the side of the bridge?

A. I don't know of my own knowledge.

Q. Did you hear that that had been done?

A. I heard it.

Q. You heard that that night?

A. I heard firing at the bridge. I don't know who it was that did the firing.

Q. You heard firing when you were there?

A. No, sir; I did not.

1234 Q. You heard there had been firing at the bridge?

A. Yes, sir.

Q. That is, people under the bridge or at the side of the bridge had been firing up at people on the bridge?

A. Yes, sir.

Q. That is what you heard when you got there?

A. Yes, sir.

Q. Do you know whether Matt Galloway was there to stop that?

A. No, sir.

Q. Did you hear him say anything about protecting the people there from that firing on the side?

A. I don't remember that he did.

Q. Did he have a gun?

A. Yes, sir; he did.

Q. Did you not hear him say he was going out to protect those people from that firing on the side of the bridge?

A. No, sir; I did not.

Q. Did you hear him say anything about that at all?

A. No, sir; I did not.

Q. He did have a gun?

A. He did.

Q. Do you know where he got it?
A. At the jail, I suppose.
Q. If you do not know——
A. I do not of my own knowledge.
1235 Q. What kind of a gun was it? Was it one of the jail guns?
A. Yes, sir; I took it to be a jail gun. The first I seen of it was when he came in the car and sat down. That is the first time I seen him.
Q. Was there any other deputy sheriff with him?
A. I don't remember of any other just now.
Q. Do you remember seeing any other deputy sheriff out there?
A. No, sir.
Q. Where did Matt Galloway get on the car?
A. Right in front of the jail.
Q. The car does not go in front of the jail, does it?
A. It did at that time.
Q. Where did the car line run at that time?
A. It started from Broad street at night and came down to Eighth, and up Eighth to Walnut, and out Walnut.
Q. It ran right straight the whole way out to the bridge?
A. It went out Walnut to Sixth and turned again to Lookout, and down that way. It makes several turns.
Q. But it ran by the jail at that time?
A. It ran by the jail at that time.
Q. He got on the car right in front of the jail?
A. Yes, sir; we all did.
Q. You had heard shooting?
A. I had heard firing out in that direction.
1236 Q. How long before had you heard that?
A. It had been, I suppose, thirty minutes, or something like that.
Q. About thirty minutes?
A. Yes, sir.
Q. That was when you saw him get the gun and get on the car in front of the jail?
A. I did not see him get the gun.
Q. I mean that was when you saw him get on in front of the jail and go down there?
A. Yes, sir.
Q. When you got out there there was no other trouble or excitement then except that there had been some shooting from the side up towards the people on the bridge?
A. That is all I heard of.
Q. That is all you heard of?
A. Yes, sir.
Q. When you went back after you had been around hunting up deputy sheriffs, did you go to the jail and get on the car there, or did you pass the jail on the car?

A. No, sir; I stopped at the jail.
Q. You stopped at the jail?
A. Yes, sir.
Q. Did you find Matt Galloway there when you stopped?
A. Yes, sir; I think we all got there near about the same time. There was several there. I don't remember the exact time when
1237 we got there, but when I went in there was several in the office.
Q. Was Matt. Galloway in the office?
A. I don't remember whether he was in there—whether he came ahead of me or after me. I can't say positively about that.
Q. This was about half an hour after the firing?
A. No; the firing was taking place just as I was coming up near the jail, within, I guess, half a block of the jail. I heard the firing on the bridge. I went on into the jail, and about that time I seen quite a number as I went in the front door of the jail and turned to go into the office where the telephone is. There was quite a number in there talking.
Q. Then it was half an hour after that before you went on out, was it?
A. Well, something like that. I won't say positively.
Q. It was something like half an hour?
A. I wouldn't say positively it was half an hour.
Q. Did you take a gun when you went out?
A. No, sir.
Q. Did you see Matt. Galloway get his gun at the jail?
A. No, sir.
Q. He went on out with you about half an hour after the firing you had heard there?
A. Somewhere in that neighborhood. As soon as the car came we went.
Q. How long would it take to walk out there?
A. I suppose about ten or fifteen minutes; something
1238 like that.
Q. How many blocks is it?
A. I would have to count them.
Q. It is not over six blocks, is it?
A. Six and a half.
Q. Would it take you ten or fifteen minutes to walk that far?
A. Something like that.
Q. It would depend on how fast you go?
A. Yes, sir.
Q. If you wanted to get there right badly to stop a mob, you could get there inside of ten minutes, could you not?
A. I could run and get there in that time, yes.
Q. Who else went out with you on this car about half an hour after the firing?
A. Quite a number got on. I couldn't state.
Q. See if you can remember anybody?
A. I remember seeing John Burke get on.

Q. Who is John Burke?
A. He is a bartender here in town.
Q. Who else?
A. I can't recall any other names at present.
Q. Any other deputy sheriffs besides Matt. Galloway?
A. He is all I remember. There might have been others on the front of the car. I got on the rear of the car and sat down.
1239 Q. Did Matt. Galloway call for any men or posse to go with him, or did you, to go out there and suppress any riot?
A. No, sir; I didn't hear him call for any.
Q. Did you do that?
A. No, sir; I did not.
Q. You both knew Johnson had been taken out, or understood it?
A. I understood he had.
Q. And none of you summoned any posse, so far as you heard?
A. No, sir.
Q. You did not?
A. No, sir.
Q. Do you remember whether Galloway got to the jail after you did, or whether he was there before you got there?
A. I couldn't say positively.
Q. As a matter of fact, do you remember when he got there?
A. No, sir; I do not.
Q. He might have been there four or five minutes or half an hour before you started out. You do not know how long it was?
A. No, sir; I don't know how long he had been there. I can't say whether he came up ahead of me or after me.
Q. Or when it was?
A. No, sir.
Q. Except that he did go out on the street car with you? Were there any guns there in the jail?
1240 A. Yes, sir.
Q. Why did you not take a gun out there and try to stop that mob?
A. The mob had dispersed at that time. I didn't know where they was.
Q. When you first heard shooting were there not guns there?
A. I suppose there was; I don't know. I heard later, after all this was over——
Q. I am not asking what you heard later.
A. All right.
Q. You knew they kept guns at the jail?
A. Yes, sir.
Q. And you were a deputy sheriff?
A. Yes, sir.
Q. It was your duty to put down a mob and to prevent lynching? You understood that?
A. Yes, sir.
Q. Why did you not take a gun and start out?

A. It was too late at that time.

Q. You did not know what had happened? You were six blocks away and you heard firing, but you did not know what had happened?

A. Some one came in and said the mob had dispersed. I don't know who that was. Some one said: "Let's catch the car and go out and see."

1241 Q. I am talking about when you got there half an hour before, when you heard the shooting. You had been there half an hour before you went out on the street car?

A. No; I don't say it was a half hour.

Q. I misunderstood you then. How long was it?

A. It was somewhere within a half hour. I can't say positively that was the time. The time I got to the jail until I got to the bridge, I say was somewhere within half an hour.

Q. And in all that time, after you first heard that shooting, you made no effort to get a gun, or to go out and stop it?

A. No, sir.

Q. And when you went finally, you did not take a gun?

A. I had a pistol.

Q. But you did not get one of the Winchesters out of the jail?

A. No, sir; I did not.

Redirect examination by Mr. CHAMLEE:

Q. Do you remember the day in February, about the time Ed. Johnson was tried?

A. I don't remember the exact day of the month. I remember the time.

Q. He was tried in the court here, and then where was he taken after the trial? What became of him?

1242 A. He was taken to Knoxville.

Q. Do you know how long he stayed in Knoxville?

A. For some time; until after Judge Clark's decision.

Q. Was it about a month?

A. Something like that; yes sir.

Q. Then was he brought back to Chattanooga?

A. He was.

Q. After he was brought back to Chattanooga, state whether or not there was ever, at any time, any guarding of the jail to your knowledge during the ten days he was in Chattanooga previous to the lynching?

A. There was not, to my knowledge.

Q. State if everything in the community, as far as you could hear or learn, was perfectly quiet, with no threats of lynching, or anything of the kind in the community, to your knowledge?

Mr. SANFORD. I object to that, as directly leading and suggestive, and as putting the words in the mouth of the witness. You do not mean to, of course, but it is just giving him the answer.

Mr. CHAMLEE. I do not want to tell the witness, but I want him to say. I beg your pardon.

By Mr. CHAMLEE:

Q. State whether or not you had heard any threats of lynching by anybody after Johnson was brought back to Chattanooga?

A. I had not.

1243 Q. State whether or not the guarding of the jail that has been talked about so much during this trial did occur, so far as you know, previous to the time Johnson was taken to Knoxville?

A. Yes, sir.

Q. In order to fix the time when the trial occurred, I will hand you for your inspection, and that of the Attorney-General, a certified copy of the judgment giving the date of the trial of Ed. Johnson in the criminal court. After the Attorney-General looks at it, I want you to look at it for a moment.

(The certified copy above referred to was handed to the witness and by him to Mr. Sanford.)

By Mr. CHAMLEE:

Q. Look at that, Mr. Jones, and see if that fixes the date?

A. Yes, sir.

Mr. CHAMLEE. We now offer in evidence certified copy of the judgment entered in the criminal court of Hamilton County, Tennessee, duly certified by the clerk of that court, giving the date of the trial of the case of the State of Tennessee against Ed. Johnson and the judgment convicting him of the crime of rape, which we ask may be made a part of the record.

Mr. SANFORD. I object to that on the ground that it is irrelevant and incompetent under the issues of this case; and, further-

1244 more, that it is not a copy of the entire record, and not supported by the record.

The COMMISSIONER. Let it be copied into the record, subject to the objection of counsel for the Government.

The above-mentioned paper is in the words and figures following, to wit:

"CHATTANOOGA, TENNESSEE, *Feby. 9, 1906.*

"Court met pursuant to adjournment, present and presiding the Hon. S. D. McReynolds, judge, etc., when the following proceedings were had, to wit:

"STATE
vs.
ED. JOHNSON. } No. 23689. Charge: Rape.

"Again came the Attorney-General and the defendant in person, and again the same jury, to wit: Charles Hall, Wm. Kearns, J. B. Jordon, A. T. Hooker, C. E. Bearden, J. L. Wrenn, H. L. Bible, N. Irvin, Kelly O'Rear, O. L. Hurlburt, P. D. Cotter, Pierce Leavitt, heretofore duly sworn according to law and who were respited last evening and having returned into open court and in the custody of the same sworn officer in whose custody they were placed when respited last evening, do on their oath say defendant, Ed. Johnson, is

guilty of rape, as charged in the indictment, and fix his punishment at death by hanging.

"It is therefore the judgment and sentence of law and of this court that the sheriff of Hamilton County take and keep the defend-
ant, Ed. Johnson, in the county jail of said county of Hamil-
1245 ton until Tuesday, March 13th, 1906, when within the legal hours and in the manner prescribed by law he shall hang him by the neck until dead. And the court thereupon formally pronounced the death sentence upon Ed. Johnson as directed by law and in accordance with the above judgment.

"Thereupon formal motion for a new trial was made by defendant. Court thereupon adjourned until to-morrow, Feby. 10th, 1906, at 9 a. m.

"S. D. McREYNOLDS, *Judge.*

"STATE OF TENNESSEE, *county of Hamilton:*

"I, R. H. Howard, clerk of the circuit and criminal court of said county, do hereby certify that the above and foregoing is a true, perfect, and correct copy of the judgment in the case of the State vs. Ed Johnson, as the same remains on record in my office in book A. G. page 546.

"Witness my hand and seal of said office at office in the city of Chattanooga, Tenn., this March 12th, 1906.

"R. H. HOWARD, *Clerk.*

"By J. P. PEMBERTON, *D. C.*"

By Mr. CHAMLEE:

Q. Mr. Jones, this record, a copy of which I have handed to the stenographer, shows the trial of Ed Johnson to have been on
1246 the 9th day of February, 1906. After the trial of Johnson and his removal from Chattanooga to Knoxville immediately thereafter, did you ever guard the jail or help to guard the jail of Hamilton County any time between that time and the time of the final trouble?

A. No, sir.

Q. Did you know of anybody else ever being called on to guard the jail at any time?

A. I did not.

Q. Did you ever know of there being any necessity or hear of any necessity, or have any reason to apprehend danger from any unlawful element or anybody else during the time that Ed Johnson was a prisoner in the jail before he was lynched?

A. No, sir.

Q. I will ask you to state whether it was, or was not, a very great surprise to you when you went up to the jail with your prisoner, Steve Turner, on that night, to discover that there was a mob at that time in control of the jail?

Mr. SANFORD. I object to the question as leading, and the testimony called for as irrelevant and immaterial.

By Mr. CHAMLEE:

Q. What is your answer?

A. It was a surprise to me.

Q. I will ask you to state if your occupation as deputy sheriff brought you in contact with the people in the community, the
1247 lawless element as well as the good citizens?

A. It did.

Q. So that if there had been for any perceptible length of time any general talk of lynching, you would probably have heard about it?

A. I think I would.

Q. I will ask you to state if you had heard of any talk of lynching after Ed. Johnson was brought back from Knoxville?

A. I had not.

Recross-examination by Mr. SANFORD:

Q. As a matter of fact, the feeling against Ed. Johnson with reference to the matter of lynching subsided after he was tried and convicted on February 9, because he was sentenced to be hung on Tuesday, the 13th, and it was thought he was going to be hung, and there was no use in lynching him. They wanted to get him out of the way. That is so?

A. Yes, sir.

Q. Up to the time you went away on that Friday before the lynching occurred there was nothing to give rise to an opinion that there was going to be any delay in hanging him?

A. None whatever.

Q. There was no further excitement, and no further danger of lynching him, because everybody thought he was going to be hung on March 13, the date that was set?

1248 A. Yes, sir.

Q. Then they went to Judge Clark about it?

A. Not on March 13th. This was after that.

Q. It was first set for March 13th?

A. And then it was set later.

Q. Then before March 13th his two lawyers went to Knoxville to Judge Clark to have the federal court intervene in the case, and Judge Clark declined to take any action in reference to it, and it was then supposed he was going to hang on the date that was fixed; and the governor granted a stay until the 20th, did he not?

A. Yes, sir.

Q. It was then supposed he was going to be hung on the 20th, so there was no need of lynching and no excitement about it; and then when you left on Friday and went to the country, and did not get back, nobody knew that any application had been made to the Supreme Court, and nobody knew there was going to be any further delay in the matter. Is not that a fact?

A. Yes.

Q. And for that reason, because nobody knew there was going to be any delay, there was no apprehension of lynching?

A. I did not know of any.

Q. You did not know there was going to be any further delay about it?

A. No, sir.

1249 Q. You had not been here from Friday until Monday, and when you came back Monday you did not go to the jail, but went to Squire Boone's office?

Mr. CHAMLEE. I wan to object to the question of the Attorney-General, because he is making an argument. I know he does not mean to do that, but that is the result of it any way.

By Mr. SANFORD:

Q. You did not know anything about what had happened in the meantime, after you went away Friday? You did not know that the conditions had changed at all, as I understand?

A. I think I would have heard it. I was taking the papers at home, and I didn't see anything in the papers.

Q. Did you read the Monday morning paper?

A. I won't say for sure I did.

Q. You do not recollect reading it, do you?

A. I am not positive. I guess I did, but I don't remember positively.

Q. I asked you, if you remember reading it. You do not remember reading it?

A. Not now.

Q. And if the paper stated that the Supreme Court had granted a stay of proceedings, you have forgotten it?

A. I don't remember reading it.

Q. I say if it was in the paper, and you read it, you have forgotten it now?

1250 A. I don't remember reading it at that time.

Mr. CLIFT. I may want to call this witness when we take up our case.

Mr. SANFORD. You can make him your witness, I suppose.

Mr. CLIFT. I suppose he would be that any way.

Mr. SANFORD. Yes, I suppose he would be.

Mr. CHAMLEE. You can call any of our witnesses, either side, as far as I am concerned.

AZARIAH SHELTON, a witness produced on behalf of the defendant Frank Jones, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Shelton, how long have you lived in Hamilton County, Tennessee?

A. Fifty-seven years last January.

Q. Have you ever held any public offices in this county?

A. I have.

Q. What offices have you held?

1251 A. From 1872 to 1882 I was superintendent of public instruction. From 1882 to 1888 I was county trustee. From 1888 to 1890 I was sheriff. Beginning in December, 1891, I was in the county clerk's office—chief deputy for nearly three years. In 1894 I was elected to the legislature of Tennessee. Since that time I have been in various offices in the county.

Q. What political party do you affiliate with in this county, Mr. Shelton?

A. I have been affiliating with the Republican party for many years.

Mr. SANFORD. I object to the question as incompetent.

Mr. CHAMLEE. We will withdraw that. We just asked that for our own information.

By Mr. CHAMLEE:

Q. Are you acquainted with the defendant, Frank Jones?

A. I am.

Q. How long have you known Mr. Jones?

A. Ever since he was born.

Q. How close did his parents live to where you lived when he was a boy?

A. They never lived more than four miles from me, and they lived within a mile and a half, and along that way.

Q. You have known him all his life?

A. I have known him all his life.

Q. What district did his people live in, where he was
1252 raised; what is the post-office?

A. In the old Fifteenth district then, now the Eighteenth—no, now the Sixth. It was the Eighteenth and then the Sixth.

Q. What is the post-office?

A. Tyner Station.

Q. Did you live near there, or did your father live near there?

A. I was born and raised three miles from Tyner, and when Frank was born I was near to Tyner than that.

Q. I will ask you if, during his boyhood days and since he has been a man, you have had more or less association with him, and have known him intimately all his life?

A. Well, since he has been a man I have had occasion to meet with him. I meet with him in secret organizations and meet him at the office and other places.

Q. I will ask you to state if you know his general reputation and character in the community in which he lives now, and has lived all his life.

A. I think I do.

Q. Is that general reputation and character good or bad?

A. Good.

Q. From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A. I believe so. I would take it as the truth.

Q. How far do you live from the county bridge?

1253 A. One block.

That is, within about a block of where Ed. Johnson was lynched?

A. About two blocks, I would take it. He was lynched about one block on the bridge. That is the distance.

Q. Did you or not see Frank Jones anywhere about there that night?

A. I did not.

Cross-examination by Mr. SANFORD:

Q. Did you see that mob that night? Did you see the lynchers that night?

A. I saw a bunch of men pass my house.

Q. What time of night was that?

A. That was after ten o'clock.

Q. Did they have Johnson with them?

A. I couldn't tell who any of them were. I couldn't tell whether they were white or black.

Q. Did you hear the firing of shots?

A. Well, I went up to the end of the bridge and didn't go any further. To let you know what I did, I got on a car—if you want to know that—I got on a car at either ten or ten-fifteen, at Market street, on the line of cars going to Hill City. In passing along I saw somebody—anyway, I noticed half a dozen men standing in front of the jail, and I says, "They have got guards out here," to the conductor. He says: "No; it is a mob." I didn't pay
1254 any attention to it, because I hadn't heard any mob talk. I went on home, and my wife asked me if I saw the mob. I told her, no. She says: "There is one; I had a telephone from a telephone girl"—an acquaintance. I says: "There is no mob."

Q. It would not be competent to state the conversation with your wife, and I did not call for that.

A. I did not know the mob. I did not know anybody.

Q. Did you see them go by?

A. Yes; I saw them at the time, and walked out to the gate.

Q. Did you see any of them under a light?

A. No, sir; when they were passing they were right opposite, on the other side, under the shadow of the trees—right on the opposite side. They would have to be pretty close to me to tell a white man from a black one.

Q. Did you recognize anybody?

A. No, sir.

Q. Did you go to the bridge?

A. I did.

Q. After it occurred?

A. Yes; I walked along with Dr. Holtzclaw. I don't know that I spoke to him.

Q. Did you recognize anybody there?

A. I did not. I recognized two men at the end of the bridge, I remember.

Q. Who were they?

A. T. J. Gillespie, the tax collector of the city; he was the first man.

Q. Who else?

1255 A. I spoke to him. They were hanging Johnson at the moment. I says, "This won't"——

Q. Never mind what you said. You recognized Gillespie. Who else did you recognize?

A. I went behind the bricks to avoid the shots. I thought there would be some shooting. The only man I saw there was a Mr. Beeler.

Q. What Beeler is that?

A. They call him Will Beeler.

Q. You recognized him?

A. I recognized him. There was a young man walked up with me from my house. He rooms there.

Q. Who was that?

A. Arthur Hyndman.

Q. He walked up with you to the bridge?

A. Yes, and back.

Q. He walked up with you and back?

A. Yes, sir; we walked up in a body, together.

Q. You went up with Dr. Holtzclaw?

A. I went up with Dr. Holtzclaw.

Q. Did you see the lynchers?

A. I saw the men in bulk. I saw somebody, it looked like getting a rope up, or something. I took it to be that, but I couldn't tell anybody. I wasn't near enough.

Q. Did you and Dr. Holtzclaw walk to him, to where he was?

A. I walked alongside him. I didn't walk with him.

1256 Q. How long was that after the lynching occurred?

A. It might have been ten minutes, or something like that. Really I wouldn't say positively how long. It was not but a few minutes.

Q. Had the lynchers dispersed?

A. Everybody that was on the bridge, apparently—I wouldn't say positively, but it seemed to me everybody who was on the bridge had come off, and others were stringing on. A good many had gone on afterwards, after they came on, before I went up.

Q. A crowd of people had passed on after the lynchers had come off?

A. Yes, sir; they kept coming for two or three hours, possibly; until they removed the body, at least, afterwards. They kept going backwards and forwards.

J. P. Webb, a witness produced on behalf of the defendant, Frank Jones, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Are you a justice of the peace of this county?
A. Yes, sir.
Q. Do you know the defendant Frank Jones?
A. I do.
Q. How long have you known him?
1257 A. About twenty-three years.
Q. Twenty-three years?
A. Yes, sir.
Q. Were you and he raised in the same neighborhood, or near together?
A. Yes, sir; we lived about four miles apart for that length of time.
Q. Do you think you know his general character in the community in which he was raised and in which he now lives?
A. Yes, sir.
Q. Is it good or bad?
A. Good.
Q. From that general reputation and general character is he entitled to full faith and credit on his oath in a court of justice?
A. He is.
(No cross-examination.)

1258 E. D. BASS, a witness produced on behalf of the defendant Frank Jones, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Bass, do you hold any official position in this county?
A. Yes, sir.
Q. What position do you hold?
A. Justice of the peace.
Q. Do you know the defendant Frank Jones?
A. I do.
Q. How long have you known Mr. Jones?
A. I guess about 30 years.
Q. You and he were raised in the same civil district or near together?
A. Well, most of the time; yes, sir.
Q. Do you know his general character and reputation in the community in which he lives?
A. I do.
Q. Is it good or bad?
A. Good.
Q. From that general reputation and character is he entitled to full faith and credit on his oath in a court of justice?
A. Yes, sir.
(No cross-examination.)

1259 WILLIAM SHELTON, a witness produced on behalf of the defendant, Frank Jones, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Shelton, have you held any official position in this county?

A. Yes, sir.

Q. What official position have you held?

A. I have been justice of the peace and I have been deputy county register.

Q. Do you know the defendant, Frank Jones?

A. Yes, sir.

Q. How long have you known him?

A. Ever since he was born.

Q. I will ask you to state whether or not he ever went to school to you?

A. Yes, sir.

Q. Do you think you know his general reputation and character in this county?

A. Why, yes, sir; I think I do.

Q. Is that general reputation and character good or bad?

A. It was always good.

Q. From that general reputation, is he entitled to full faith and credit on his oath in a court of justice?

A. Yes, sir; I think so.

(No cross-examination.)

1260 H. D. HUFFAKER, a witness produced on behalf of the defendant, Frank Jones, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Huffaker, have you ever held any official positions in this county?

A. Yes, sir.

Q. What official positions have you held?

A. County superintendent of schools and county trustee.

Q. Do you know the defendant, Frank Jones?

A. Yes, sir.

Q. How long have you known him?

A. About 25 years.

Q. Do you think you know his general reputation and character in the community in which he lives?

A. I do.

Q. Is it good or bad?

A. It is good.

Q. From that general reputation and character is he entitled to full faith and credit on his oath in a court of justice?

A. He is.

(No cross-examination.)

1261 W. P. BARNES is recalled for further cross-examination.

By Mr. SANFORD.

Q. Have you ever been arrested for anything?
A. Yes, sir.
Q. What for?
A. Sunday business.
Q. Have you ever been indicted for anything?
A. No, sir; nothing but that.
Q. Nothing but that?
A. That is all.
Q. How many times have you been arrested?
A. Why, I couldn't say. It has been a good while back. I don't remember.
Q. How many times?
A. I couldn't say. I don't remember.
Q. Two or three times?
A. Two or three times, several years ago.
Q. You have been arrested a good many times for violating the law, have you not?
A. No, sir; I haven't had very many cases. I haven't had any for the last five or six years.
Q. You have lost your license lately, have you not?
A. License?
Q. Yes.
A. Why, yes, sir; the commissioners cut them off.
Q. Your license has been taken away?
A. Not yet.
1262 Q. Have you not been notified that it is going to be?
A. No, sir.
Q. They are renewing the licenses now for next season, and has not yours been taken away, or have you not been notified that it is going to be taken away?
A. No, sir; not yet.
Q. Don't you understand that it is going to be taken away?
A. I understand that it is; yes, sir; but I have had no notice.
Q. You have had no official notice?
A. No, sir.
Q. What kind of a saloon is your saloon; white or mixed?
A. Mixed; yes, sir. I run two, one in front and one in the rear.
Q. You run a saloon for whites and one for negroes?
A. Yes, sir; separate.

Additional testimony on behalf of the defendant, Luther Williams.

Mr. CHAMLEE. If your honor please, when we adjourned at noon I still had one witness that I had not examined for Mr. Williams. He has come in now and I would like to examine him while we are waiting.

Mr. SANFORD. All right.

Mr. PENLAND. Character only?

Mr. CHAMLEE. Character only; yes, sir.

1263 Mr. SANFORD. There is one question I want to ask Mr. Jones. Is he still a deputy sheriff?

Mr. CHAMLEE. Yes, sir; he is still a deputy sheriff.

Mr. SANFORD. Let the record show that it is agreed that Frank Jones is still a deputy sheriff under Captain Shipp.

T. G. NEWMAN, a witness produced on behalf of the defendant Luther Williams, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. What is your full name, Mr. Newman?

A. T. G. Newman.

Q. Have you ever held any official position in this county or city?

A. Yes, sir.

Q. What official position did you hold?

A. I have been constable four years in the city.

Q. I will ask you if you are now connected with the Chattanooga Electric Railway Company?

A. The Chattanooga Railways Company?

Q. Do you know the defendant, Luther Williams?

A. Yes, sir.

Q. How long have you known him, Mr. Newman?

A. Four or five or six years.

Q. Did your duties as constable bring you in contact with the people doing business along Market street, between the river and Montgomery avenue?

1264 A. Yes, sir.

Q. On Market street, the main street of Chattanooga?

A. Yes, sir.

Q. I will ask you if you think you are acquainted with the general character and reputation of Luther Williams?

A. I think I am.

Q. Is that general reputation and character good or bad?

A. It is good.

Q. From that general reputation and character, is he entitled to full faith and credit on his oath in a court of justice?

A. I think so.

Q. On the subject of being a man of violent, turbulent, or vicious tendencies, do you think you know his character on that subject, or as to his being a peaceable, law-abiding citizen?

A. I think so.

Q. State how his character is on that question?

Mr. SANFORD. I object to any evidence on that point as incompetent and inadmissible.

Mr. CHAMLEE. We will not insist on that. I expect you are perhaps right on that.

Mr. SANFORD. I think I am.

Cross-examination by Mr. SANFORD:

Q. How long have you known Luther Williams?

1265 A. Five or six years, somewheres along there; I don't know just exactly.

Q. What is his business?

A. The saloon business.

Q. Has he run one or more saloons?

A. I think he has run more than one.

Q. Is he running more than one now?

A. Not that I know of.

Q. How well have you known him?

A. Well, I have known him pretty well.

Q. How often do you see him?

A. I expect I see him once or twice a day.

Q. How do you happen to see him? Where do you see him?

A. I generally see him on the street, or generaly see him of a morning as I go to work, in front of his place of business.

Q. What business dealings do you have with him?

A. None at all.

Q. You have never had any business dealings with him?

A. No, sir; none at all.

Q. Have you ever seen him inside of his barroom?

A. Yes, sir.

Q. How often do you see him there?

A. I don't think I have ever been in the place he runs now since he has been running it. He used to be up on Walnut street, and I think I was in there a few times.

Q. Did he act as his own barkeeper, do you know?

A. I think he was when I was in his place.

1266 Q. Your acquaintance with him is limited to seeing him pass on the street, or passing him?

A. Well, I have had frequent conversations with him, just meeting him and saying, "How are you getting along?"

Q. Passing in front of his saloon?

A. Yes, sir.

Q. Do you ever see him after business hours; do you ever go out with him?

A. No, sir.

Q. Do you belong to any clubs with him, or anything like that?

A. No, sir.

Q. Do you know who his associates are outside of business hours?

A. Well, I see him with Mr. Weatherford and Mr. Knight.

Q. That is in the daytime, is it, or in the evening?

A. Well, I have met him on the street in company with those gentlemen.

Q. What is Mr. Weatherford's business?

A. I think Weatherford is a bartender.

Q. What is Knight's?

A. I think he is the proprietor, or was the proprietor, of a place. I don't know whether he is now or not.

Q. Of a saloon, you mean?

A. Yes, sir.

Q. What other associates has he that you know of?

A. Well, I think I have saw him frequently in company with Mr. Spencer.

Q. Who is Mr. Spencer?

1267 A. He is a gentleman that was on the stand here this morning—Ed Spencer.

Q. What is his business?

A. I think he runs a saloon and grocery store in connection.

Q. Those are the men you have seen him with most?

A. Yes. I have saw him with those men frequently. I have saw him with others, but I can't recall their names.

Q. Did you ever hear them speak of him until they were summoned as witnesses in this case?

A. I don't think I ever heard his character discussed.

Q. Did you ever hear his charecter discussed one way or the other, as a matter of fact?

A. I don't think I ever did.

Q. And you do not really know, then, what his associates think about him, do you? You never heard them talk about him, did you?

A. Well, they don't generally talk about a fellow that has got a good character.

Q. What you mean is that you never heard him talked about?

A. No, sir.

Q. Are you an associate of Spencer, Weatherford, and Knight? Are they your associates?

A. No, sir.

Q. So you do not know whether his associates talk about him or not, do you?

A. I never heard them.

Q. You do not go with them?

1268 A. I have met them frequently and had frequent conversations with them at different places and different times.

Q. Are his associates your associates, generally speaking, or not?

A. Well, no; I wouldn't say that they are.

Q. You probably have never met him in a social way, have you, after business hours?

A. No, sir.

Q. And you have not the same social acquaintances and friends that he has, have you?

A. Well, I might have; yes.

Q. But do you have?

A. Well, I couldn't say as to that.

Q. You do not know about that?

A. I might have some intimate friends that are intimate friends of his.

Q. You have never been in any place where Luther Williams would be naturally the subject of conversation, have you?

A. No, sir.

Q. And about all you know, then, is that you have never heard anything against him; you have never heard anything about him one way or the other?

A. No, sir.

Q. You did hear that he was indicted for murder once, did you not?

A. Yes, sir; I was an officer at that time. He was indicted for that.

1269 Q. Did you ever hear of his being indicted for anything else?

A. No, sir.

Q. Or arrested for anything else?

A. I think he has been arrested for gaming.

Q. You have heard that?

A. Yes, sir.

Q. How many times was he arrested for gaming?

A. I couldn't say as to that.

Q. Does not that somewhat affect his character, in your judgment?

A. I don't think so, as far as truth and honesty is concerned.

Q. You were asked about his general reputation in the community. Now, you think it does not hurt a man's reputation to be arrested for gaming? That does not count; is that the idea?

A. Well, I think a man could be honest.

Q. I did not ask you that question. I ask you if you do not count that in as a part of a man's reputation, being arrested for gaming?

A. That was several years ago, about the time I first knew him. I will say for the last four years, or about that time, he has not——

Q. You have not heard of his being arrested?

A. He hasn't been, I know; because I have been in a position to know.

Q. It is possible he might have been and you not have known it, but probably not, you think?

1270 A. It could have been, yes; but I think I am in a position that I would have known it if he were.

Q. Do you know whether that barroom that he used to run before this one was an exclusively white barroom?

A. I couldn't say as to that.

Q. You could not say how that was?

A. No, sir.

Mr. CHAMLEE. Now, if your honor please, we will ask an adjournment until to-morrow morning at 9 o'clock.

Mr. SANFORD. Are there any other witnesses here?

Mr. CHAMLEE. I have another case. I do not think we are ready.

Mr. SANFORD. Let us get through with all we can. Mr. Stanfield wants to start in in the morning, and we want to give him a clear deck if we can.

(After conference:)

Mr. CHAMLEE. Mr. Commissioner, Mr. Perkins is out on some official business, I understand, but he telephones that he can have his witnesses here at 9 o'clock in the morning and will take but a few minutes. We can finish the Frank Jones case in the morning.

The COMMISSIONER. We will adjourn until 9 o'clock to-morrow morning.

(Thereupon, at 3.40 p. m., the hearing was adjourned until Thursday, June 20, 1907, at 9 o'clock a. m.)

* * * * * * *

1281 ROBERT E. PRITCHARD, a witness produced on behalf of the defendant Nick Nolan, being first duly sworn by the commissioner, according to law, testified as follows:

By Mr. SHEPHERD:

Q. What is your name?

1282 A. R. E. Pritchard.

Q. I will ask you if you are the same gentleman that has been referred to by witnesses heretofore examined as Robert Pritchard, and as the gentleman who got hit on the occasion of the lynching on the county bridge?

A. Yes, sir; I am.

Q. When was the first time you ever saw the defendant Nick Nolan?

A. Saturday morning.

Q. What Saturday morning?

A. Saturday morning last, to know who he was. If I ever saw him before that I do not remember it.

Q. Do you know who it was that hit you?

A. No, sir. When I was hit I was standing with my hand on the rope between the members of the mob and the prisoner. I was standing facing almost north and the man who hit me was standing behind my left shoulder. He hit me from above and over my left shoulder, and I could not have seen who it was that hit me.

Q. Would that indicate that he was a taller man than you?

Mr. SANFORD. I object to the question as argumentative.

The WITNESS. I was struck from above. The first bruise I had hit my eyebrow, and the blow of his fist or "knucks," which I think it was, hit on the bone of the nose, about a half inch or a quarter of an inch from the eye.

1283 By Mr. SANFORD:

Q. You have seen the defendant, Nick Nolan, during the present sitting of this commission, have you?

A. Yes, sir.

Q. I will ask you to state if he is a man of lower stature than you are?

A. Yes, sir; he is considerably lower than I am.

Cross-examination by Mr. SANFORD:

Q. You did not see who hit you, did you?

A. No, sir.

Q. And you do not know?

A. No, sir.

Q. You do not know who it was?

A. I do not know, except by hearsay evidence.

Q. I mean, if it had been a man you were intimately acquainted with you could not have identified him simply because you did not see him?

A. No, sir; I did not see him.

Q. It knocked you out pretty well, did it not.

A. Pretty well; yes, sir.

Q. How long was it before you came to?

A. When I came to, the negro had just fallen down.

Q. Did you institute any action against anybody? Did you start to prosecute anybody?

A. No, sir.

Q. You did not?

1284 A. No, sir.

Q. Did you hear that night who it was?

A. No, sir; not that night.

Q. When did you hear, first?

A. Well, I have had five names volunteered to me as the man who hit me, by five different people.

Q. I asked when you first heard who it was?

A. I don't remember. I think it was the next day.

Q. Were you at the jail that night?

A. No, sir.

Q. When did you join the lynching party? You were a reporter on a paper, were you not?

A. I joined the lynching party about almost at Fifth street. That was about a block from the jail, on the way to the bridge.

Q. On their way to the bridge?

A. Yes, sir.

Q. And you stayed with them until you got knocked out?

A. I stayed with them after I got knocked out.

Q. You revived?

A. Yes, sir.

Q. You came to?

A. Yes, sir.

Q. Did you see who fired the shots?

A. Yes, sir.

Q. Who was it that fired the shots?

A. The man that fired the shots was a man that I did

1285 not know. Do you want me to tell you about that man?

Q. Yes; that is what I asked you.

A. The man who fired the shots was not Bart Justice, or Luther Williams. It was a man who very much resembles Bart Justice,

who has a moustache; who is lower, and who has as much stomach on him; a more muscular man, and a man I never saw but once before. I met him on Cherry street, when there was no one around from whom to find out who he was. The day after the lynching he stopped me, and says——

Q. I am not asking what the man said to you the next day, but what you saw that night.

A. That is the next time I saw him, and that is the only other time I saw him.

Q. How many shots were fired?

A. There were a number of them. Some shots were fired at the negro when he was hanging, but this man walked over to the man after he was lying on the edge of the sidewalk, on the iron railing that keeps the wheels from running onto the sidewalk, and I think

Q. You had been hit with brass "knucks," you think?

brance of the shots fired into the negro when he was being hung.

Q. Was that after you had been knocked out, or before?

A. L. B. Hatcher, I think it was, and Frank Stoops--I believe they were the men—raised me to my feet just as the negro was falling down.

Q. You had been hit with brass "knucks," you think?

A. I think so.

1286 Q. That was after you came to. You were unconscious?

A. No, sir; I could not say I was unconscious. I was semi-conscious.

Q. You do not know what shots were fired while you were unconscious?

A. I could hear shots.

Q. Do you know who fired all the shots that were fired there that night?

A. No, sir; there were shots fired there, and from Lookout street.

Q. How many shots were fired all around there?

A. I do not suppose there were over 15 or 20 shots fired.

Q. Did you see the men that fired all those 15 or 20 shots?

A. No, sir.

Q. The man who fired at this particular time you saw, and you say you do not know this particular man?

A. Yes.

Q. And the men who fired the others you did not see?

A. No, sir; those shots were fired while the negro was swung up. The negro never was hung to his death; but they were fired as I remember—I would not be positive about this, because I was not in a position to remember it very clearly—as I remember it these shots were fired from the rear of the crowd; at least from my rear. That was while the negro was being hung, I mean.

Q. You did not see who did the shooting then?

1287 A. No, sir.

Q. You were standing right by Johnson, were you not?

A. I was the closest man to Johnson up to the time I was knocked down.

Q. And anybody that fired had to fire from behind you, because you were the closest to him?

A. There were no shots fired then. That was before the rope had been put over the girder. No shots were fired at that time.

Q. Do you know how long you were in a semi-conscious condition?

A. The time seemed a good deal longer then. I suppose it was about a minute and a half.

Q. You think you were only unconscious for a minute and a half. What was done in that minute and a half?

A. The negro was—as I say, I have only a half-way recollection of that.

Q. Have you any means of determining the time you were unconscious?

A. No, sir; I can only estimate it.

Q. You may have been unconscious a good deal more than that; you cannot tell?

A. No; I was not unconscious much more than that. I know what happened when I came to.

Q. Did you know what happened when you were unconscious or semi-conscious?

A. I partly knew what was going on.

Q. So that you knew how much time elapsed?

1288 A. I was never rendered unconscious by the blow. I was simply dazed, you might say, by it. I was knocked down and my head was hit against the little iron strip of the sidewalk. I was never what you would call "knocked out" at any time.

Q. Had you been drinking any that night?

A. Yes, sir; I had had three drinks.

Q. You were knocked down after that?

A. Yes, sir.

Q. But you think you know what was going on, and can accurately tell about the time?

A. No; I cannot accurately tell what was going on.

Q. When had you had those drinks?

A. I would rather not answer the question as to where I had them.

Q. I did not ask you where you had them, but when.

A. Oh; I had had those before 8 o'clock. I will say where I had them. I had them——

Q. You need not tell that if you have any objection. I do not ask that. How far was Johnson from you when those shots were fired that you saw the man fire?

A. As I say, I was the closest man to Johnson. I was knocked from the rear. The man who hit me was standing in the rear, on the left side of me, and I was naturally knocked to the right side of the bridge, a distance of about eight feet. I was still the closest man to Johnson after he had fallen down. The rope broke, or was cut by a bullet, and I was still the closest man to Johnson, until this man

walked up in front of me. There was a car at that time, I sup-
1289 pose about three hundred feet away. He walked up in front of me. I was standing at that time. He walked over within about two feet of Johnson, and within about four or five feet of me, and deliberately fired, I will say, five or six bullets into Johnson's body.

Q. Did you count the shots as they were fired?

A. I did not count them, except to know that he emptied his revolver.

Q. Was it a seven-shooter or a six-shooter?

A. I do not know. I think there were five shots.

Q. You did not count them, but you know he emptied his revolver?

A. Possibly he did not empty it. I do not remember now.

Q. He had his back turned to you?

A. No, sir; he had his profile to me.

Q. Who was standing nearest to you? Who else was there?

A. The nearest men to me all that time were Andy Ware and L. B. Hatcher.

Q. Who is L. B. Hatcher?

A. He works for the Southern Express Company, at the office in the News Building.

Q. Who else?

A. Frank Stoops was standing not far away, and Kirby Wert was probably ten feet away. Dr. Holtzclaw came up afterward. Those are the only ones I remember being close to me.

Q. Those are the only ones you remember?

A. Yes, sir.

1290 Mr. CHAMLEE. I want to ask one question.

By Mr. CHAMLEE:

Q. You saw the man on Cherry street after the lynching was over, as I understand, that fired the shots into the body of Johnson—the day following?

A. Well, as near as I could be sure of any two men, whom I never had seen before, that was the man.

Q. The man spoke to you, and said something to you about the lynching?

A. Yes, sir.

Mr. SANFORD. I object to that as a suggestive and leading question. He had not said that, and it is putting the words in the witness's mouth. I object to the competency of the testimony.

By Mr. CHAMLEE:

Q. I will ask you to state whether or not the man that you saw fire the shots into the dead body of Ed. Johnson was either Luther Williams or Nick Nolan or Bart Justice?

A. No, sir; the man that fired the shots into the man's body was not any man that is a defendant in this case, so far as I have seen.

Q. You know all these three men I have named, Nolan, Justice, and Williams?

A. Yes, sir; I know them when I see them.

Mr. SHEPHERD. Now I am through, and hope you will pardon me for the interruption.

1360 OSCAR YARNELL, a witness produced on behalf of the defendant George Brown, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. STANFIELD:

Q. Mr. Yarnell, what is your business or profession?

A. Lawyer.

Q. Where do you live?

A. Hill City.

Q. How long have you lived there, Mr. Yarnell?

A. About 20 years.

Q. Are you acquainted with Captain Brown?

A. I am.

Q. How long have you known him?

A. I have known him since I have lived in Hill City, about 20 years—almost 20 years.

Q. Do you remember the occasion of the lynching of the negro Ed Johnson?

A. Yes, sir.

Q. Where were you that night, Mr. Yarnell?

A. I was at the north end of the county bridge.

Q. What were you engaged in there that night?

A. I had gone down to the end of the bridge to the Odd Fellows Hall, and was around Mr. Ault's drug store just before going to the hall.

Q. Why were you at the Odd Fellows Hall?

A. There was a public meeting or an entertainment of some kind, of a literary nature, that night, and I was there.

Q. Given by whom?

1361 A. By the Odd Fellows.

Q. Where were you before you went up to the hall, Mr. Yarnell?

A. I was at Mr. Ault's drug store, just across the street from there.

Q. Whom did you see there, Mr. Yarnell?

A. I saw Mr. Ault, Squire Cowart, and Mr. Brown, as I now remember.

Q. Are you positive that you saw Mr. Brown there?

A. I am positive that I saw Mr. Brown there; yes. I think possibly I saw Dr. Palmer there also.

Q. What is it, Mr. Yarnell, that fixes on your mind definitely that that was the same night that Ed Johnson was lynched?

A. Because before I left the hall I heard of the lynching.

Q. I will ask you whether or not you heard shots?

A. I did.

Q. The date of that entertainment was when?

A. March 19th.

Q. Did you have any talk with Captain Brown there at the end of the bridge?

A. I did.

Q. As a matter of fact, did you extend him an invitation to attend the entertainment?

A. I did. I invited Squire Cowart, Mr. Brown, and possibly others who were there to go up to the hall.

Q. Did Mr. Brown accept the invitation or not?

1362 A. Mr. Brown declined to go. He said something about one of his children being sick, I believe.

Mr. SANFORD. I object to the statement as to what he said.

By Mr. STANFIELD:

Q. Do you know whether or not Captain Brown purchased any medicine there that night?

A. I do not know. I did not take any notice.

Q. Did he leave before you did, or did you leave first?

A. As I remember now, Mr. Ault closed his store, and as I went up in the hall Captain Brown and Mr. Ault went up the hill.

Q. Do you know Captain Brown's general character?

A. I do.

Q. What is it?

A. It is good.

Q. From that character would you give him full faith and credit on his oath?

A. I would.

Q. What is his character on the question of quiet, peace, and good order?

Mr. SANFORD. I object to evidence on that point as incompetent and irrelevant to the issues.

A. It is good.

By Mr. STANFIELD:

Q. How does Mr. Brown stand as a citizen?

A. He stands well.

1363 By Mr. PRITCHARD:

Q. How long is the county bridge?

A. It is nearly half a mile.

Q. It spans the Tennessee River and runs practically north and south?

A. Yes, sir. There are six spans and then an approach on the north end.

Q. When you say "half a mile" do you include the approach?

A. The approach.

Q. The approach is a trestle?

A. Yes, sir.

Q. It is a street-car bridge, a foot bridge, and a bridge for vehicles?

A. Yes, sir.

Q. There are sidewalks or footways on either side of the driveway?

A. Yes, sir.

Q. The cars run across the bridge and there are double tracks across the bridge?

A. That is the way; yes, sir.

Q. You were at the far end of the bridge that night?

A. The north end; yes, sir.

Q. What time was it that you heard this noise of the lynching?

A. It was some time near half past ten.

Q. Near half past ten o'clock?

A. I think so; yes, sir.

1364 Q. Do you remember, Mr. Yarnell, what sort of a night that was; whether it was a cold night?

A. I don't remember.

Q. It was about half past ten o'clock?

A. Yes, sir.

Q. Mr. Brown had gone at that time, as I understand you?

A. Oh, yes, sir.

Q. This was after this entertainment you speak of had broken up?

A. Well, just about the time it broke up.

Q. Did you know what the noise was when you first heard it? How did you find out what it was?

A. Why, the way I——

Q. I do not care to have you go into details.

Mr. SANFORD. I object unless the witness knows what it was.

A. I heard the shots, and was informed what was being done.

By Mr. PRITCHARD:

Q. You got the information from somebody else?

A. Yes, sir; from a car man—a street-car man.

Q. After you had heard the shots?

A. Yes, sir.

Q. Mr. Yarnell, you were living here all the time?

A. All the time.

Q. And you say your residence is in Hill City. Where is your law office?

A. Temple Court Building.

Q. Where is that?

1365 A. On the corner of 7th and Cherry streets.

Q. Is that right in the populous part of the city, the principal part of the city?

A. It is.

Q. I will ask you whether or not there are a good many law offices there.

A. There are; yes, sir.

Q. I will ask you whether that building is much frequented by the business men and by the public generally.

A. Yes, sir.

Q. I will ask you whether or not it is not the principal office building in the city.

A. Yes, sir; the principal office building.

Q. And at that time whether or not all the offices in the building were occupied by business men, lawyers, and others?

A. Yes, sir.

Q. And there is a law library there?

A. Yes, sir.

Q. Were you during that period of time mixing with the public yourself?

A. More or less; yes, sir.

Q. In going to and from your home did you cross that county bridge?

A. Every day.

Q. I will ask you whether the cars that you rode upon passed the front of the county jail and between the court-house and the county jail on 6th street?

A. Yes, sir.

1366 Q. They passed that point?

A. Yes, sir.

Q. Now, after the time that the attempt was made to lynch Johnson, I will ask you to state whether or not there was anything to your knowledge to indicate, or to cause you or any other citizen with whom you mix to suspect or believe, or if you had any information of any character whatever, that there was any danger of a lynching of Ed Johnson?

A. Well, Mr. Pritchard, I never heard of any. I never heard of any threats to lynch him, and I did not regard the situation as at all dangerous.

Q. Did you know of any fact that would lead you to suspect or believe that he was about to be lynched?

A. No, sir; I did not. Public sentiment seemed to be quieted.

Q. Were you expecting this lynching that night?

A. I was not; no, sir.

Mr. SANFORD. I object to the statement as to what the witness suspected.

By Mr. PRITCHARD:

Q. Had anything occurred to lead you to suspect that it might occur that night, or was there anything to your knowledge in the public demeanor, or the public conduct, or the public conversation, that informed you, or that would lead you to believe, that there was about to be a lynching?

A. No, sir; not so far as I heard.

1367 Cross-examination by Mr. SANFORD:

Q. Where had you been on the day of the lynching—on Monday?

A. At my office.

Q. Were you in your office or where?

A. I was in my office and, I think, at the court-house; possibly at the jail.

Q. Possibly at the jail?

A. Possibly so.

Q. Do you remember about that?

A. I don't remember being at the jail.

Q. Do you remember knowing that the Supreme Court had granted a stay of execution? Had you heard that?

A. I read it in the afternoon papers. I think that was the first time I knew of it.

Q. That was the first time you knew of it?

A. I think so.

Q. And you saw it in the afternoon paper?

A. Yes, sir.

Q. Is it not a fact that the first apprehension of a lynching of Ed Johnson was due to the fact of the desire of the lawless element to avoid any delay in his case?

Mr. STANFIELD. I object to that question because it calls for a conclusion of the witness.

By Mr. SANFORD:

Q. Was it not understood that when a crime of that sort had taken place they wanted prompt punishment? Was not that the spirit and the idea?

1368 A. That was the sentiment; yes, sir. They wanted a speedy trial; that is, the entire community.

Q. That was the main idea in connection with it?

A. Yes.

Q. And then they tried to lynch him the first thing, just after he was arrested.

A. I don't know how soon after the arrest that first attempt was made. I remember the occasion of it.

Q. They were in such a big hurry that they were going to lynch him before there was a trial, even?

A. Yes. I understood they wanted Westfield also.

Q. They were going to lynch him right off, before a trial?

A. I don't know how long it was; possibly a few days.

Q. There was a very speedy trial, was there not; quicker than usual?

A. Well, it was just two or three weeks, I guess.

Q. That is quicker than usual, is it not?

A. Not the way we run this court now.

Q. In murder cases? Do you remember any other murder case——

Mr. PRITCHARD. This is not a murder case; this is a rape case.

By Mr. SANFORD:

Q. Well, a rape case?

A. Well, they have here, since the establishment of the criminal court, very little delay in criminal cases.

Q. I am just asking you now if you ever knew of another that was tried as quickly as that.

1369 A. I don't know whether I did or not. I don't remember just the length of time between the commission of the offense and the trial.

Q. Suppose it occurred on the 23d or 24th of January and he was tried on the 9th of February, about two weeks later?

A. Well, I don't know as I recall any other case that has been tried——

Q. Tried that quick?

A. Tried that quick; no, sir.

Q. And then he was convicted and sentenced to be hung on the 13th of March, was he not?

A. I don't know about the date. I know he was sentenced to be hung.

Q. About the middle of March?

A. Something like that; yes.

Q. In the meantime, until it was certain that he was going to be convicted, and while the trial was going on, they had to have extra guards, did they not?

A. I understood so; I don't know.

Q. There was a good deal of excitement about it?

A. Well, I saw guards around the court house and jail. I don't know anything about anything that occurred at night, because I wasn't around.

Q. That was an unusual scene around the court house, was it not, having guards around the court house?

A. Yes; the first time I had ever seen anything of that kind.

1370 Q. You understood there was anticipation of trouble, even during the trial, right in the presence of the court; the court had to be guarded?

A. I don't know as the court had to be guarded.

Q. The court room; I do not mean the judge, but the court room—the proceedings?

A. They had guards up there; yes, sir. I saw them.

Q. Did you ever see that sort of thing before around the court house?

A. I never did.

Q. Then he was sentenced to be hung?

A. Yes, sir.

Q. Did you hear the report of the lawyers in regard to whether or not he should appeal his case to the Supreme Court?

A. I didn't hear them make their report; no, sir. I understood they had made a report. I understood that a report of some kind had been made.

Q. A committee of lawyers was appointed to consider the question?

A. Yes, sir.

Q. You were not in the court house when that happened?

A. No, sir. I was not there.

Q. And do not know what they said?

A. I don't know, except from what perhaps I may have read or heard about it.

Q. They decided not to appeal, or at least there was no appeal taken?

A. I don't know.

1371 Mr. STANFIELD. We desire to note an objection to that testimony as entirely incompetent.

Mr. SANFORD. The witness says he does not know about that.

The WITNESS. I have no personal knowledge.

Mr. SANFORD. I do not ask you about it when I find that you have no personal knowledge.

By Mr. SANFORD:

Q. Then after it was decided not to appeal, was it understood in the community, as you went your rounds and met people, that he would be executed on the day fixed?

A. Well, Mr. Sanford, I don't remember about that. I know there was an application made to Judge Clark for a writ of habeas corpus.

Q. That was some time after. I am talking about when it was first decided not to appeal.

A. Yes, sir. I think that is true—that it was understood he would be executed.

Q. And then the lawless element, who desired that he be speedily hung, understood that he would be executed by law and there was no necessity for a lynching?

A. I don't know what the lawless element understood about it.

Q. You did not go with the lawless element?

A. I did not come in contact with them.

Q. The danger was to be expected from the lawless element, was it not?

A. Yes, I think so.

Q. And the danger was that they would take matters in

1372 their own hands if they thought there was going to be delay through the law? That was it, was it not?

A. Of course if there was a lynching it would be from the lawless element.

Q. And you did not mix with them, and did not associate with them? You have just stated that.

A. Well, no.

Q. And you do not know what they thought about it?

A. No, I don't know what they thought.

Q. And after you read in the paper on Monday afternoon that the Supreme Court had granted the stay, did you meet or associate with any of the lawless element between that time and the time the lynching occurred?

A. Well, that I don't know. I might have come in contact with some of them.

Q. Do you remember?

A. No, sir; I don't know. I was around the streets, around my office, and around the court-house; possibly around the jail. I don't know.

Q. You read that paper about four or five o'clock?

A. Yes, sir. I went over across the bridge about 6 or 7 o'clock.

Q. And you went over to this Odd Fellows meeting?

A. I went home. After supper I came down to the hall.

Q. Where did you read your paper?

A. Before I left the office.

Q. Then you went on home?

A. Yes, sir.

1373 Q. And after supper you went to the Odd Fellows meeting?

A. Yes, sir.

Q. And that is about all you did after that?

A. Yes.

Q. You were not mingling with any lawless people that you know of, after you read that paper, were you?

A. Not that I know of; no, sir.

Q. You were not around any place where you would have been apt to have learned of the formation of a mob?

A. Except on the streets, as I say, and around the office building.

Q. Do you think a mob would be apt to be generated in Temple Court?

A. Oh, no.

Q. That is where you and Mr. Pritchard and all the lawyers have their offices, is it not?

A. Yes, sir.

Q. If there is a law-abiding place in the city, it is Temple Court, is it not?

A. I think so; yes, sir.

Q. If there is a place where a lynching party would not be started, it is in Temple Court?

A. Yes, sir.

Mr. PRITCHARD. That is a place where the men profess to know the law.

By Mr. SANFORD:

Q. That is a place where law-abiding people congregate?

1374 A. Yes, sir.

Q. And that is the place where you were; and you did not hear of any mob being hatched there?

A. No.

Redirect examination by Mr. PRITCHARD:

Q. But that place, where these men profess to know the law, is a place where a good many criminals go to escape the clutches of the law, is it not—to seek assistance?

A. Oh, yes.

Q. Mr. Sanford stated a while ago, and you to a certain qualified extent agreed with him, that this spirit of lynching which was mani-

fested was or might be attributable to a desire for a speedy trial. I will ask you if the fact is that the only time when the spirit of lynching was made manifest, until this final lynching, did not occur on the very day that Johnson was arrested, and before there was any question of trial at all?

Mr. SANFORD. I object to that question on the ground that this is direct examination, so far as this witness is concerned, on the part of Captain Shipp, and that is a leading and suggestive question.

Mr. PRITCHARD. I will frame my question differently, then.

By Mr. PRITCHARD:

Q. I will ask you whether or not the attempt to lynch Johnson occurred on the day Johnson was arrested?

Mr. SANFORD. There is no dispute about that.

1375 A. It was within a very short time. I don't remember whether it was the night after he was arrested or not.

By Mr. PRITCHARD:

Q. I will ask you whether or not that spirit of lynching, instead of being actuated by a question of speedy trial or delay of the law, or anything of the kind, was not moved by a spirit of abhorrence of the crime?

Mr. SANFORD. I object to that question as leading and suggestive.

A. I think so, yes sir; unquestionably.

Recross-examination by Mr. SANFORD:

Q. I will ask you whether the abhorrence of that crime had at all subsided between the time of the first attempt at lynching and the final lynching?

A. No, sir; I think not.

Q. You think not?

A. No, sir.

By Mr. PRITCHARD:

Q. I will ask you whether or not the paroxysm by which mobs are moved, and by which alone, so far as my knowledge extends, they are moved, had or had not subsided?

Mr. SANFORD. I object to that question as leading and suggestive.

A. I think it had somewhat. I think so.

1376 By Mr. SANFORD:

Q. It did not subside on the night of March 19th, did it?

A. Oh, no; I don't think it did.

* * * * * * *

1502 *Testimony in the case of Joe Clark resumed.*

Dr. M. J. LEWIS, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law,

1503 testified as follows:

By Mr. LYNCH:

Q. Dr. Lewis, where do you live?

A. I live in East Chattanooga.

Q. How long have you lived there?
A. 22 years.
Q. Are you a practicing physician there?
A. Yes, sir.
Q. How long have you been?
A. I have been practicing thirty-nine years and a half, about.
Q. Doctor, do you know the defendant, Joe Clark?
A. Yes, sir.
Q. How long have you known him?
A. I have known him ever since he moved to the community there. I think that has been twelve or fifteen years; I don't remember exactly.
Q. I will ask you if you know his general character.
A. Yes, sir.
Q. Is that general character good or bad?
A. Yes, sir; it is good.
Q. From that general character would you give him full faith and credit in his oath in a court of justice?
A. Oh, yes, sir.
Q. What about his character for peace and good order?
Mr. SANFORD. I object to that as incompetent.

By Mr. LYNCH:

Q. What is his character for peace and good order?
1504 A. His character for peace and order. He is one of the peace men, order men, and so on; moral, and wants things done right, as far as I have ever knew.
Q. I will ask you if you know the defendant, Matt. Galloway?
A. Yes, sir; I know Matt Galloway.
Q. How long have you known him?
A. Ten years, possibly; I disremember exactly the number of years, but near that.
Q. Do you know his general character?
A. Why, I think I do; yes, sir.
Q. Is it good or bad?
A. It is good.
Q. From that general character would you give him full faith and credit on his oath in a court of justice?
A. Yes.
Q. And as to peace and good order, too?
A. Yes.
Mr. SANFORD. I object to the question, first, as leading, and, second, as calling for incompetent testimony.

By Mr. LYNCH:

Q. What is his character on the subject of peace and good order?
A. Why, it is good.
Mr. SANFORD. I renew the same objection as to the competency of the testimony.
Mr. LYNCH. I changed the form of the question merely to
1505 avoid your objection as to its being leading.

Mr. SANFORD. I am glad you did.

By Mr. LYNCH:

Q. You say you have lived out there for many years in East Chattanooga?

A. Yes, sir; it has been 22 years and better.

Q. I will ask you if your practice carries you among all classes of people out there?

A. Yes, sir.

Mr. SANFORD. You are sort of forgetting again, are you not, Mr. Lynch?

Mr. LYNCH. Yes.

By Mr. LYNCH:

Q. Do you or not mix among and practice for the laboring people and business men and citizenship generally?

A. Yes, sir.

Q. Are you in active practice, Doctor?

A. I couldn't say but what I am. I am not as active as some. I try to do mostly neighborhood practice. I used to have a horse and buggy and go all over the hills and around, but for the present, for the last three or four years, I have confined my work mostly to the office and the immediate neighborhood and going out on the car. I go to Highland Park and St. Elmo, and sometimes Hill City.

Q. I will ask you whether or not you were in general practice when the negro Johnson was lynched last year?

A. Yes, sir; about the same.

1506 Q. I will ask you if at the time of the lynching, on the day of the lynching, or about that time, there was any talk or apprehension of mob violence to Johnson?

A. I didn't hear anything. It seemed that the mob violence, or the question of mobbing Johnson, had subsided with us. I don't remember to have heard anything said about it at all, about that time.

Q. I will ask you if you heard it discussed at that time, or of its being discussed?

A. I can not say that I did not at all, but it had subsided, as we considered, very near altogether.

Q. I will ask you if there was any apprehension of mob violence at that time?

A. Not with us.

Q. Did you know of there being any anywhere?

A. No, sir; I did not.

Cross-examination by Mr. SANFORD:

Q. Did you know the Supreme Court had granted a stay so that there would be a delay in the hanging of Ed. Johnson?

A. Yes, sir.

Q. When did you hear that?

A. I don't know; some time before he was lynched; I disremember.

Q. The week before?

A. A week or two before.

1507 A week or two before? You heard that the Supreme Court had granted the stay, but you thought that in the week or two that had passed after they knew there was going to be a delay owing to the fact of this stay, that there was no further excitement? You still thought that?

A. I don't think there was, in our neighborhood, any general talk over there. There was no talk of his being lynched at all.

Q. You heard it talked of that week about the Supreme Court having granted the appeal, and you still thought there was no talk of his being lynched?

A. That is the idea I gathered from the talk of the community.

Q. The community talked it over that week about the appeal, but the community was satisfied there would be no lynching?

A. I don't know that I could say they were perfectly satisfied about it. I don't know about that.

Q. They were going to let it go to the Supreme Court?

A. I think so.

Q. That was your understanding?

A. Yes, sir.

Q. You remember about that?

A. Yes.

Q. About hearing those conversations?

A. Yes.

1508 Q. How long have you known Matt. Galloway?

A. Ten or twelve years, I presume.

Q. How close have you lived to him?

A. Very close, or reasonably so. I suppose he has not been at any time living more than half a mile away from my dwelling.

Q. What business has he been in the last ten or fifteen years?

A. Working on public works. I believe he was a railroad man for quite awhile, and then he became a deputy sheriff, and since that time he has been working——

Q. When did he decome deputy sheriff?

A. I expect it has been about three years ago; something like that.

Q. Since he was deputy sheriff, have you known him as well as you did before?

A. I have not been associated with him, possibly, as much, because he is gone from home. I have been about his family and have been with him when he was sick, frequently.

Q. He is a patient of yours?

A. Yes, sir.

Q. And the other defendant you have testified about, Clark; is he one of your patients?

A. No, sir; he is not. I never have done any practice for Mr. Joe Clark that I remember of.

Q. You have for Galloway?

A. I have for Galloway.

1509 Q. Have you ever heard of him getting in any "scrap" or trouble?

A. In arresting people, I have heard of his having some little troubles with them.

Q. Did you ever hear of his having any other troubles?

A. Not especially.

Q. What kind of trouble did you hear about his having in arresting people?

A. I think possibly I have heard about his catching people where they would be smaller, possibly, and holding them fast.

Q. Using violence, you mean?

A. Rather in somewhat a violent way. He is a man of——

Q. He is not overly peaceable, you have heard?

A. He is a peacable man, but when he becomes excited, possibly he will take hold of people in a more rabid style than some other modest man. I don't think he means any harm by it, it is his way of taking hold of things and catching them at once.

Q. He is pretty big, bigger than anybody else he gets hold of?

A. Yes.

Q. He is a very large man, and has a way of taking hold of people in a rough way, and rather rabid occasionally? Is that it?

1510 A. Well, yes; you know there is a difference in some men. Some men are modest about things, and some men are bolder about it, and feel more like they had authority than others.

Q. You think he is more bold than he is modest. Is that your idea?

A. Well, he is a modest man. He is a man without fear.

Q. Is it not a fact that it is a part of his reputation that he is a violent man?

A. I don't know that I could call it violent. I would hardly think so, because I don't think the man aims to be violent at all. but he is very firm, and when he undertakes to arrest a man he wants him to understand that "you are my prisoner, and of course you will have to abide by what I think is right." I don't think he aims to mistreat any one at all.

Q. You said you had not heard of his getting into any other trouble especially, I think. I may have that wrong. What other trouble have you heard of his being in? Did he ever get in any shooting scrapes?

A. I don't know about that.

Q. Did you ever hear of any?

A. I could tell you about something, possibly, that I had in mind, more. We had an election out there in our district, and Matt. Galloway, for some reason unknown to me—I do not know what brought it about—got in a fight on election day with some man out there.

1511 Q. You have heard of that?

A. I was there and saw a part of it at a distance.

Q. Was there any shooting that day?

A. No, sir.

Q. He just knocked the fellow down. Did you ever hear of him getting in any other things besides that?

Mr. PRITCHARD. Let him answer.

The WITNESS. No, sir; I don't know that I do.

By Mr. SANFORD:

Q. Try to recollect.

A. I do remember that I heard on one occasion of possibly two strange men passing through the town and they made some slight remark to him and he turned back and went back to the men and called their attention to it and he made them take back what they had said, or something of that kind. That was some time before; six or seven years ago.

Q. Did you ever hear of his getting in any other fight besides the one on election day that you speak of?

A. I don't know that I did.

Q. Try to recollect and tell how it was.

A. That is about all the thinking I can do, Captain. I don't remember now.

Q. Do you remember of his ever being arrested?

A. I think one of the deputy sheriffs on this occasion at the election I speak of went up to Mr. Galloway and said to him "Consider yourself under arrest."

Q. Do you know whether he was tried or not?

1512 A. No, sir; I don't know about that.

Redirect examination by Mr. LYNCH:

Q. I will ask you whether or not it is part of his character and reputation that he is a fearless and vigorous officer?

A. Yes, sir.

Mr. SANFORD. I object to that, as incompetent and irrelevant; and further, that it is proof in chief.

By Mr. LYNCH:

Q. I will ask you whether in this county, Hamilton County, and in the city of Chattanooga, there are many desperate criminals, and whether the officers do not have to deal frequently with desperate criminals?

A. I think so; I suppose so.

Q. I will ask you whether or not Galloway's reputation is that he goes after and arrests without fear the most desperate criminals?

A. Yes, sir.

Mr. SANFORD. I object to that in the first place, on the ground that it is leading; and in the second place, because the testimony is incompetent.

By Mr. LYNCH:

Q. And he does it in a strenuous and vigorous manner?

A. Yes, sir.

Mr. SANFORD. I object to that, as directly and positively leading.

1513 By Mr. LYNCH:

Q. I will ask you whether or not his personal character for peace and good order is good?

A. Yes, sir.

Mr. SANFORD. I continue those objections to that testimony.

Mr. LYNCH. That is all.

* * * * * * *

1525 J. C. McGHEE, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

1526 By Mr. LYNCH:

Q. What is your profession?

A. Lawyer.

Q. Where do you practice law?

A. Chattanooga.

Q. How long have you practiced here?

A. About sixteen years.

Q. Where do you live?

A. At Sherman Heights, a suburb of Chattanooga.

Q. Do you know Joe Clark, a defendant here?

A. I do.

Q. How long have you known him?

A. About fifteen years, I would say.

Q. Do you think you know his general character?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

Q. I will ask you if you know his general character on the subject of peace and good order?

Mr. SANFORD. I object to testimony on that point as incompetent and irrelevant.

The WITNESS. I think I do.

By Mr. LYNCH:

Q. Is it good or bad?

A. Good.

Q. From his general character would you give him full faith and credit on his oath as a witness?

1527 A. I would.

Q. Do you know Mr. Matt. Galloway?

A. I do.

Q. Do you think you know his general character?

A. I think I do.

Q. Is it good or bad?

A. Good.

Q. From that general character, would you believe him on his oath?

A. I would.
Q. What about his general character for peace and good order?
A. Good, so far as I know.

Cross-examination by Mr. SANFORD:

Q. Have you ever known of Galloway getting into any rows?
A. I have heard of one or two instances where he would seek to make arrests of parties and they would resist and he would use some force on that occasion.
Q. Has he ever been arrested himself?
A. Not that I know of.
Q. Have you ever heard of any other trouble he has ever been in?
A. I don't know of any special trouble he has been in. I un-
1528 derstand he has done considerable work serving criminal court papers and making arrests.
Q. I was asking for anything else besides all that, if there was anything else you ever heard of. Did you ever hear of his getting into a row on election day—having a fight?
A. August of last year, do you refer to?
Q. I don't know. I am asking you if you ever heard——
A. That is the only time I ever heard of it.
Q. You did hear of his getting into a row that one election day?
A. I don't know that you might term it that Galloway got into a row. The way that I understood the matter was that a fight was entered into between two parties on the election grounds, and Mr. Galloway, as an officer, went in to make an arrest, and there was some resistance made on that occasion.
Q. Did you ever hear of his getting into a fight on another occasion on election day when he was not acting as an officer?
A. I never heard of that.

Redirect examination by Mr. PRITCHARD:

Q. The row you refer to that occurred on election day was not a difficulty that Matt. Galloway had anything to do with at all, but was a difficulty between two people at the election, and in undertaking to suppress the difficulty these people had been in they resisted him as an officer?
1529 A. Yes, sir.
Mr. SANFORD. I object to the question as directly leading and suggestive.
Mr. PRITCHARD. It is directly leading, and is intended to be so.
Mr. SANFORD. It is putting the words in the witnesses' mouth.
The WITNESS. The way I understood the facts about that to be, a couple of parties had got into a fight on election day at the grounds, and Mr. Galloway, as an officer, went in to separate the parties. I did not understand that Mr. Galloway was originally a participant in the matter at all.

By Mr. PRITCHARD:

Q. He had nothing to do with the fight, except as an officer?

A. He went in as a peace officer, as I understand the facts. I did not see the difficulty myself.

Q. Did he suppress the difficulty or row?

A. Yes.

Q. I will ask you to state what his reputation as an officer is.

Mr. SANFORD. I object to that question and the answer that may be given as incompetent and irrelevant.

By Mr. PRITCHARD:

Q. Do you know his reputation as an officer?

A. I think I do.

Q. I will ask you what that reputation is, in respect to his vigor in enforcing the law and preserving the peace and order as an officer?

1530 Mr. SANFORD. I repeat the objection.

The WITNESS. I think his reputation is that he is a good officer.

* * * * * * *

1531 O. G. STONE, a witness produced on behalf of the defendants, being first duly sworn by the commissioner, according to law, testified as follows:

By Mr. LYNCH:

Q. Where do you live?

A. I live here in Chattanooga.

Q. What is your profession or business?

A. I am a lawyer.

Q. How long have you practiced law here in Chattanooga?

A. About six years.

Q. Do you know the defendant, Joe Clark?

A. Yes, sir.

Q. How long have you known him?

A. I have known him from three to five years.

Q. I will ask you whether or not you have known him well during that time?

A. Yes, sir.

Q. I will ask you whether or not you had business with him frequently?

A. Yes, sir.

1532 Q. He has been a deputy sheriff here for some time, has he not?

A. Yes; a deputy sheriff here for a year or more.

Q. During that time did you come in contact with him in a business way?

A. Yes, sir; I was in contact with him frequently during the time he was an active deputy.

Q. When did he cease to be an active deputy?

A. Well, he was an active deputy from—it was in 1905, and in the fall of 1905 he ceased to be a deputy and went into the goods business at East Chattanooga.

Q. Do you know whether he continued to do any deputy's work at all after he went in the mercantile business?

A. At the time he was actively engaged in the business I saw him practically every day, and he was an active deputy sheriff at that time. When he quit the deputy sheriff business and went into the goods business at East Chattanooga I never saw him without I was at East Chattanooga, or sometimes he would come to the bank and would come out to where I stayed and sit a while with us.

Q. I will ask you if you know his general character?

A. Yes, sir.

Q. Is it good or bad?

A. It is good.

Q. From that general character would you believe him on his oath?

A. I would.

Q. What about his general character for peace and good
1533 order?

A. It is good.

Mr. SANFORD. I object to testimony on that point.

By Mr. LYNCH:

Q. Do you know Matt Galloway?

A. Yes, sir.

Q. How long have you known him?

A. Fifteen or twenty years.

Q. Do you know his general character?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

Q. From that general character would you believe him on his oath?

A. I would.

Q. What about his character for peace and good order?

A. It is good.

Q. I believe you say you have been in the active practice of the law here at the bar for several years?

A. Yes, sir.

Q. I will ask you whether or not you practice largely in the criminal courts?

A. Yes, sir.

Q. And defend criminals?

A. Yes, sir.

Q. I will ask you whether or not you come in contact with all classes of people in Chattanooga?

A. Yes, sir.

1534 Q. And in Hamilton County?

A. Yes, sir.

Q. Do you remember Ed Johnson's case?

A. Yes, I remember it.

Q. Do you remember the lynching of Ed Johnson?

A. Yes, sir.

Q. I will aks you if, on the day, or near the time of the lynching of Ed Johnson there was any excitement here in Chattanooga, or Hamilton County, or any discussion or apprehension of the lynching or mobbing of Johnson?

A. Some time before the lynching of Johnson there was quite an excitement here. I guess it was a month before; but the excitement had died down at the time of the lynching. I did not think it would occur.

Mr. SANFORD. I object to the witness' own opinion as to what he thought about it.

The WITNESS. Right up at the time there was not any excitement.

By Mr. LYNCH:

Q. Did you hear any discussion of any impending mob, or any apprehension of mob violence?

A. Well, I had not, right before the occurrence.

Q. That is what I mean, on that day. I will ask you if the publication in the morning paper of the fact that the case had been appealed to the Supreme Court of the United States caused any excitement here in Chattanooga, or any apprehension that as the result of that, there would be a mob?

1535 A. No, I did not hear any discussion, if I remember aright on that day, about the question at all; and if I read it in the Chattanooga Times I do not remember that, but it seems to me that I saw it in the Evening News. I might have seen the Times that day. I buy both papers, but if I remember aright I did not read it until I got the News in the evening.

Q. That publication caused no apprehension on your part or on the part of anybody else that you know of, of a mob?

A. No, I did not think about a mob, or had not heard anybody else talk about it within a few days before.

Cross-examination by Mr. SANFORD:

Q. How do you fix in your mind the time Joe Clark ceased being what you call an active deputy?

A. Well, I was associated with Mr. Clark regularly while he was a deputy, and after this bill of information had come out and included him as one of the would-be lynchers, I discussed the matter with people that Mr. Clark was at that time not an active deputy.

Q. Do you know whether he had at that time resigned as deputy or not?

A. No, sir; I think not. I think Mr. Clark is a deputy sheriff yet.

Q. You think he is still a deputy sheriff?

A. Yes, sir.

1536 Q. Where did you know the defendant Galloway?

A. I have known him here in this county since I came here. I have lived in this county for seven years, and I knew Mr. Galloway in Bradley county, before I came here.

Q. Did you ever know of his getting into any row since he has been here?

A. Nothing more than in the discharge of his duty. I have heard of his getting into scraps with some of his prisoners, but aside from that——

Q. How many times have you heard of his getting into scraps with his prisoners?

A. Oh, two or three times; but Mr. Galloway is not what I call——

Q. That was not my question. I asked how many scraps you ever heard of his getting into. Did you hear of his getting into scraps more or less than the other deputies?

A. Well, I believe less than some of them.

Q. Less than who?

A. Well, I don't know.

Q. Who gets into the most scraps?

A. Well, I don't know about that. There is deputy sheriffs here that whenever they go to arrest a man, they are efficient officers, and they go into it in a way to arrest him.

Q. Who have you heard of getting into more scraps with prisoners than Matt Galloway; which one of them?

A. I couldn't say I know of any particular one. I have knowed of——

1537 Q. You are pretty well acquainted with the deputies generally?

A. Yes, sir.

Q. And you can not name any particular one you have heard of getting into more scraps?

A. Since I have been here I have known of officers getting in scraps with their prisoners.

Q. I say, you can not name any one you have heard of getting into more scraps than Mr. Galloway, as I understand you?

A. No, sir; I don't know as I can.

Q. Have you ever heard of his having any trouble outside of what you call scraps with the prisoners?

A. Not of my own knowledge.

Q. I am asking what you heard?

A. I have heard of this election time they speak of out here. I heard about that at the time.

Q. You heard about that. Have you ever heard of any other?

A. I believe I heard of him having a fight with a colored fellow that cut him on the face there.

Q. You heard about that?

A. Yes.

Q. What was that?

A. It was some fellow he undertook to arrest. I guess that has been six months ago—four to six months.

Q. Have you ever heard of any other?
1538 A. Well, not particular, I believe, that I can recall just now.
Q. What is your best recollection about it?
A. He may have had others; I don't know.
Q. Is that your recollection, that he has been in other fights or rows?
A. I don't call these what you would call fights. I don't believe that Mr. Galloway got up these fights. It just came up in arrests.
Q. I did not ask your opinion about how it came up. I am simply asking the question whether you heard of his being in any other fights or rows?
A. I can not say that I have, unless it came up in that way.
Q. Unless it came up in that way?
A. Yes.
Q. Do you remember where you were the day of the lynching?
A. Yes, sir.
Q. Where were you?
A. I was here in Chattanooga.
Q. Where were you engaged; were you at court that day?
A. I don't remember where I was during the day, but I do that night of the lynching.
Q. Do you remember where you were the night of the lynching?
A. Yes.
1539 Q. I did not ask about that. I was enquiring about the day?
A. I can not say just where I was.
Q. You can not say where you were?
A. No.
Q. You do not remember?
A. No, sir.
Q. Were you in the city?
A. Yes, sir.

Redirect examination by Mr. PRITCHARD:

Q. Where were you the night of the lynching?
A. I was at the corner of Market and Eighth streets.
Q. Were you on the street?
A. Yes, sir.
Q. On the public street?
A. Yes, sir.
Q. Did you go to a lodge meeting?
A. Yes, sir.
Q. What lodge meeting?
A. The Sun Lodge of Odd Fellows.
Q. Where was it held?
A. At the corner of Eighth and Market streets, over Joe Anderson's drug store.
Q. That is one of the principal places of the city?
A. Yes, sir.
Q. One of the most public places?
1540 A. It is.

Q. Were there many people there?
A. I guess there were forty or fifty people there.
Q. It was a lodge meeting?
A. Yes.
Q. How long did it last? What time did it convene?
A. At that time the lodge opened at 7.30 and lasted until about ten o'clock.
Q. Was there any discussion or intimation of any lynching there at that meeting?
A. No; I did not hear anything.
Q. You referred a while ago, in answer to Mr. Sanford's questions about Mr. Galloway, about his getting into what you termed "scraps." I will ask you to state whether in regard to those difficulties that you referred to that he got into as an officer, you ever heard, as a part of his reputation, or otherwise, of his precipitating any of the difficulties.
A. No, sir; I never did.
Q. I will ask you to state whether or not those were difficulties that he got into because of the resistance of criminals.
A. Yes, sir.
Q. And in the execution of the duties of his office?
A. Yes.
Q. I will ask you to state whether it has come to such a pass in this community that an officer who performs his duty and
1541 undertakes to suppress crime is therefore considered a disorderly man. I ask you if that is what you mean?

Mr. SANFORD. I object to that question on the ground that it is entirely incompetent and irrelevant, having no relation to any issue in this case.

By Mr. PRITCHARD:

Q. Is that considered disorderly for a man to suppress crime?
A. I think it ought not to be.
Q. Is it? I ask you, is it in this community?
A. Well, I don't think the good citizens of this community——
Q. You know whether it is or not. You know it is not, do you not?
A. Why, certainly.

Mr. SANFORD. I object to that as rather suggestive—decidedly suggestive.

Mr. PRITCHARD. You referred to it in your examination.

Mr. SANFORD. I have not used the word "disorderly" in the examination of the witness that I am aware of.

Mr. PRITCHARD. I am not speaking of "disorderly."

Mr. SANFORD. He has referred to "scraps." That is his language, not mine.

By Mr. PRITCHARD:

Q. You said he got into a difficulty, or scrap, I believe you call it, when he was cut. I will ask you whether or not it is part of
1542 his reputation that he was undertaking to arrest a negro for

a felony, and that he was armed, and cut him with a knife, and the negro was sent to the penitentiary for it?

A. I thought I conveyed the idea a minute ago that Galloway was trying to arrest a colored fellow and got cut.

Q. Who did?

A. Galloway did.

Q. I will ask you if he was not stabbed in the corner of his eye and cut the length of his face, and whether he has not the scar on his face now?

A. Yes.

Q. And I will ask you whether he did not hold the prisoner, and that man went to the penitentiary?

Mr. SANFORD. I object to the question as leading.

The WITNESS. My understanding is he arrested him.

By Mr. PRITCHARD:

Q. And that is one of the scraps, or is the scrap that has been referred to. I will ask you about what the negro population is here, if you know, in Chattanooga and this immediate community?

Mr. SANFORD. I object to that question as calling for incompetent and irrelevant testimony.

The WITNESS. It would be utterly a guess on my part.

Q. Can you guess or estimate it?

A. I would say eight or ten thousand; may be more.

Q. Are there not twenty-five thousand?

A. There may be. I said it would be a guess. I never thought of the question.

1542½ Q. I will ask you if you know what proportion of the criminals they furnish?

A. No; I couldn't say.

Mr. SANFORD. I object to that.

* * * * * * *

1556 E. D. HERRON, a witness produced on behalf of the defendant, Marion Perkins, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Herron, do you live in the city of Chattanooga?

A. I do.

Q. Do you know the defendant, Mr. Marion Perkins?

A. Yes, sir.

Q. How long have you known Mr. Perkins?

A. Between 7 and 8 years.

Q. Do you think you know his general reputation and character in the neighborhood in which he lives?

A. I think I do.

Q. Is it good or bad?

A. Good.

1557 Q. From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A. Yes, sir.

Cross-examination by Mr. PENLAND:

Q. What is your business?

A. Superintendent American Brake Shoe and Foundry Company.

Q. How close do you live to Mr. Perkins?

A. About 5 or 6 miles.

Q. Five or six miles?

A. Yes, sir.

Q. How long have you lived that distance from him; several years?

A. Well, yes, sir.

Q. How often have you been in the habit of seeing him?

A. Well, when I knew Mr. Perkins best was from 1899 to 1902, when I worked with him and saw him every day in the shop.

Q. You have not known him very well since that time, have you? Have you seen him much?

A. Well, I only see him on the street, in passing.

Q. He lives in a different part of the city from where you do and where your business is?

A. Yes, sir.

Q. And for that reason you would not come into contact with him or with the people with whom he works and associates, would you?

A. Well, occasionally only.

1558 Q. Only occasionally?

A. Yes, sir.

Q. And so since that time you would not know what a majority of his neighbors and the citizens where he lives would say about him, would you?

A. Not in his immediate neighborhood; no, sir.

Q. And you do not know, for that reason, what his general character has been for the last five or six years?

A. Only from what I happen to know from time to time.

Q. That would be from what you would know of him by meeting him personally yourself, rather than hearing him discussed among other citizens?

A. Yes, and in the discharge of his duty.

Q. Do you know whether he has ever gotten into any trouble?

A. No, sir.

Q. What did he do before he was appointed deputy sheriff?

A. He was a molder.

Q. He has not worked with you since 1902?

A. About 1902; yes, sir.

Redirect examination by Mr. CHANLEE:

Q. I will ask you, Mr. Herron, if when he worked with you you and he were in the same shop together, where you came in daily contact with him?

A. Every day; yes, sir; all through the day.

Q. How long did he work there?

1559 A. He worked there about three years, and about two years after I left, I should judge.

Q. He worked there under you for about three years?

A. About three years; yes, sir.

Q. And continued there for about two years after you quit?

A. Two years, to the best of my knowledge.

Q. And that was in the same shop, where you came in daily contact with him for three years?

A. Yes, sir.

Q. From his having worked for you, and from knowing him and knowing his associates, and from your subsequent association with him and with people that he associates with, you are enabled to fix your opinion about his general character?

A. Yes, sir.

Q. You come in contact now with people that he associates with considerably in your present position, do you not?

A. Well, more or less; yes, sir.

Q. And in that way you are enabled to pass on the question of his general character?

A. Yes, sir.

By Mr. PRITCHARD:

Q. Mr. Herron, I want to ask you about Matt Galloway. Do you know Matt Galloway?

A. Yes, sir.

Q. How long have you known him?

1560 A. About 7 or 8 years.

Q. I will ask you whether or not you are acquainted with his general character?

A. I think I am; yes, sir.

Q. Is that character good or bad?

A. Good.

Recross-examination by Mr. PENLAND:

Q. How close do you live to him?

A. I am living in the city. He is living out in the suburbs.

Q. About how far?

A. I should judge six or seven miles.

Q. How often do you see him?

A. Just occasionally; sometimes three or four times a week, sometimes maybe only once.

Q. Did he ever work for you?

A. Mr. Galloway worked at the shop; yes, sir.

Q. How long ago?

A. Why, from 1899 to 1902.

Q. About the same as the other gentleman that you refer to?

A. Yes, sir; Mr. Perkins.

Q. Were Perkins and Galloway working together at the same time?

A. Working together, yes, sir; at the same shop.
Q. Were they appointed deputy sheriffs at the same time or not?
1561 A. That I couldn't say.
Q. Were they serving at the same time as deputy sheriffs?
A. They were serving at the same time; yes, sir.
Q. Since they left there in 1902, you have seen Galloway only occasionally?
A. Occasionally; yes, sir.
Q. Have you been in the neighborhood where he lives and talked to his neighbors and the citizens there where he lives?
A. No, sir.
Q. You do not know what they think about him, or what they say about him?
A. No, sir.
Q. You have not heard them discuss his character at all?
A. No, sir.
Q. So you form your opinion about him from what you knew of him in 1901 and 1902?
A. Yes, sir.

* * * * * * *

1566 R. G. PURSLEY, a witness produced on behalf of the defendant, Marion Perkins, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Is your name R. G. Pursley?
A. Yes, sir.
1567 Q. Where do you live, Mr. Pursley?
A. I live on Rossville avenue.
Q. How far is your residence from the Hamilton Trust and Savings Bank Building?
A. About half a mile, I guess.
Q. Are you in business anywhere in Chattanooga?
A. Yes, sir.
Q. What business are you in?
A. Sale stable.
Q. Where is your stable located?
A. On Montgomery avenue, near Loomis & Hart's planing mill.
Q. How far is your stable from the junction of Market street and Montgomery avenue?
A. I guess it is about four squares.
Q. About four blocks?
A. Yes, sir; about four blocks.
Q. Do you know the defendant Marion Perkins?
A. Yes, sir.
Q. About how long have you known Mr. Perkins?

A. I don't remember just how long. Something like two years, I reckon.

Q. Do you think you know his general reputation in the neighborhood in which he lives?

A. Yes, sir.

Q. Is that general reputation good or bad?

A. It is good.

1568 Q. From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. How often do you see him?

A. Almost every day.

Q. What throws you together?

A. Well, we are not right together; only passing on the street, you know.

Q. What business relations do you have?

A. No business.

Q. Do you have any social relations? Do you go with him outside of business hours?

A. Oh, I meet up with him maybe on the street, and talk to him, or something like that. Very often he comes around to my stable, maybe, looking for drivers or something like that. I run a lot of teams, and very often he comes around talking to me, you know.

Q. Do you and he have the same associates?

A. Yes, sir.

Q. Do you have the same friends; the same people are your friends that are his?

A. Yes, sir.

1569 HARRY REED, a witness produced on behalf of the defendant, Marion Perkins, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Mr. Reed, do you live in Chattanooga?

A. Yes, sir.

Q. What business are you engaged in?

A. The laundry business.

Q. Where is your place of business, Mr. Reed?

A. William and Montgomery avenue.

Q. How far is William street and Montgomery avenue, crossing from the junction of Market street and Montgomery avenue?

A. Well, it is a square.

Q. Do you know the defendant, Marion Perkins?

A. I do.

Q. How long have you known Mr. Perkins?

A. About five years, I think.

Q. Do you think you know his general reputation and character in the neighborhood in which he lives?

A. Well, I don't know—you mean where he rooms?

Q. Yes.

A. Yes, sir.

Q. Is that general reputation and character good or bad?

A. Well, it is good, so far as I know.

Q. Do you, in your associations, come in contact and meet
1570 with the people with whom he associates, in the neighborhood in which he lives?

A. Yes, sir.

Q. In the neighborhood of Montgomery avenue and Market street?

A. Yes, sir.

Q. From that general character and reputation, is he entitled to full faith and credit on his oath in a court of justice?

A. I think he is; yes, sir.

Cross-examination by Mr. SANFORD:

Q. Who did you ever hear talk about him?

A. Who did I ever hear talk about him?

Q. Yes.

A. Why, no one.

Q. You never heard anybody talk about him?

A. No, sir.

Q. And you do not know what people generally think about him, do you?

A. Well, I have heard he is considered all right. That is all I know.

Q. How do you know that he is considered all right if you never heard anybody talk about him?

A. Well, I know that everybody thinks well of him out there.

Q. How do you know their thoughts if you never heard them talk about him?

1571 A. Well, everybody is on good terms with him in everything, and I suppose that is a good indication.

Q. You never heard any living soul talk about him, did you?

A. No, sir; I did not.

Q. You do not know what any living soul thinks about him?

A. No, sir.

Mr. CHAMLEE. If your honor please, we have some more witnesses, but they are not here, and we want to ask for a recess until 2 o'clock.

The COMMISSIONER. Does that suit you, Mr. Sanford?

Mr. SANFORD. Yes, sir.

(Thereupon, at 11.55 a. m., a recess was taken until 2 o'clock p. m.)

1572

AFTER RECESS.

The hearing was resumed at the expiration of the recess.

FRANK W. WALLACE, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Is your name Frank Wallace?
A. Yes, sir.
Q. Do you run a barroom in Chattanooga?
A. At the present time I am only a bartender.
Q. Where do you work?
A. For Harrington Brothers.
Q. What street is that on?
A. 234 Montgomery avenue.
Q. Where were you working in March, 1906?
A. At 250 Montgomery avenue.
Q. Whose place was that?
A. My own.
Q. Your own place of business?
A. Yes, sir.
Q. Do you remember the night it is said Ed Johnson was taken from the county jail and lynched on the county bridge?
A. Yes, sir.
1573 Q. Did you see the defendant Perkins that night?
A. I did.
Q. Where was he?
A. I seen him on two different occasions.
Q. Where was he the first time?
A. I seen him in the saloon about half past nine.
Q. What saloon was that?
A. That was my own place.
Q. What was he doing in there?
A. Looking for some darky he had a warrant for.
Q. That was about half past nine?
A. Yes, sir.
Q. Where did you next see him?
A. At the corner of Market and Montgomery.
Q. Was there anybody with him.
A. Yes, sir; he had a darky with him.
Q. Was that a prisoner?
A. Yes, sir.
Q. What direction did he go from there, if he went anywhere?
A. He took the negro and put him on a street car.
Q. Which way was the street car going?
A. Coming to town.
Q. In the direction of the county jail?
A. Yes, sir.
Q. Did he get on the street car with the darky?
A. Yes, sir.
1574 Q. Was that a prisoner he had?

A. I suppose he did. He had him in the waist of his pants.
Q. He was carrying him like a prisoner?
A. Yes, sir; the darky was drunk.
Q. Did you have a conversation with him at the time?
A. A small one; yes, sir.
Q. What time of night was that?
A. Ten or fifteen minutes after 10 o'clock.
Q. How do you fix the hour of the night by saying it was after ten o'clock?
A. We close the saloon at 10 o'clock, and it was just after I came out of the saloon.
Q. How do you fix that as being the same night Ed Johnson was lynched?
A. I caught the car about ten or fifteen minutes afterwards myself.
Q. Between the time you had seen Perkins with the prisoner on Montgomery avenue and Market street, and the time you got on the car did you hear about the lynching?
A. I heard about it after he had got on the car, and I went back and closed my pool room.

Cross-examination by Mr. SANFORD:

Q. What business were you in before your present business as bartender?
1575 A. I was in the furniture business, as agent.
Q. The furniture business?
A. Yes, sir.
Q. Did you ever own a saloon yourself?
A. Yes, sir.
Q. That was before you were a bartender in the present saloon?
A. Yes, sir.
Q. What kind of a saloon was it that you were bartender in there? Was it a mixed saloon or a white saloon?
A. The one I had of my own?
Q. Yes.
A. It was both, with a separate place for drinking.
Q. Do you know anything about what Mr. Perkins was doing that night except what he told you?
A. When he was coming to town? That was all I knowed then; yes, sir.
Q. I mean what he was doing in your saloon?
A. He came for my porter, for to find out where there was a darky at.
Q. Did he take a drink in your saloon that night?
A. No, sir; I don't think he did.

1576 CHARLES WATSON, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Is your name Charles W. Watson?

A. No, sir; just Charles Watson.

Q. Do you hold any official position in this county now, 'Squire Watson?

A. Justice of the peace; yes, sir.

Q. How long have you been a justice of the peace in this county?

A. Seven years next August.

Q. Where do you live, 'Squire?

A. I live in the new fourth district, St. Elmo.

Q. Do you know the defendant, Marion Perkins?

A. I do.

Q. How long have you known him?

A. I have knew him eighteen years, I expect, I expect at least eighteen years—since he was a little bit of a boy.
a boy.

Q. Did he, when he was a boy, live near where you lived—in your neighborhood?

A. Yes, sir; right in my neighborhood.

Q. Did you ever have a justice of the peace office on Montgomery avenue?

A. Yes, sir; for one year.

1577 Q. Was he an officer working in or around or near your office?

A. He worked some at my office; yes, sir.

Q. Do you think you know his general reputation and character in the neighborhood in which he lives?

A. Yes, sir.

Q. Is that reputation and character good or bad?

A. It is good.

Q. From his general reputation and character is he entitled to full faith and credit on his oath in a court of justice?

A. Yes, sir.

By Mr. PRITCHARD:

Q. 'Squire, do you know the defendant, C. A. Baker, Charley Baker?

A. Yes, sir.

Q. How long have you known Mr. Baker?

A. I have known Mr. Baker about eight years.

Q. Do you know his general character?

A. Yes, sir.

Q. What is that character, good or bad?

A. It is good.

Q. For truth and veracity, is it good or bad?

A. It is good, sir.

Q. And for peace and good order?

Mr. SANFORD. I object to the testimony in reference *in reference* to peace and good order.

1578 By Mr. PRITCHARD:

Q. For peace and good order, is it good or bad?

A. It is good.

Q. I will ask you if you ever heard or knew of Mr. Baker getting into any difficulties or trouble?

A. I never knew of Mr. Baker being in any difficulty except once. That was on Slayton street over here, when he was after a colored man whom he had a warrant for for the larceny of harness belonging to Mr. Sizer.

Q. My law partner?

A. Your law partner.

Q. What sort of difficulty was that?

A. The difficulty was that he was chasing the darky down Slayton street and he turned and shot him.

By Mr. SANFORD. Do you know that of your own knowledge? Did you see that?

A. No, sir; I didn't see it.

Mr. SANFORD. I suppose you do not care for hearsay?

By Mr. PRITCHARD:

Q. It was not a personal difficulty?

A. No, sir; he was performing his duty, trying to arrest the darky for the larceny of the harness.

Q. He was executing process?

A. Yes, sir.

Q. Is that the time Mr. Baker was shot?

A. Yes, sir.

Q. That is the only difficulty you ever heard of his being in?

1579 A. Yes, sir.

Q. The negro shot him?

A. The negro shot him in the face.

Q. Do you know Matt Galloway?

A. Yes, I know Matt.

Q. How long have you known him?

A. I have known Mr. Galloway for six years.

Q. Do you know his general character?

A. Yes, sir.

Q. I will ask you whether that general character is good or bad?

A. I would describe it as good.

Q. I will ask you whether or not you include in that for truth and veracity, peace and good order, and every other quality going to make up citizenship?

A. Yes, sir.

Mr. SANFORD. I object to the question as leading, and to the answer as incompetent.

By Mr. PRITCHARD:

Q. You are a member of the County Court of Hamilton County?

A. Yes, sir.

Q. And you have resided here how long?

A. 25 years.
Q. You are familiar and acquainted with the people generally?
A. Yes, sir.
Q. You are well acquainted in the community?
1580 A. Pretty well acquainted.
Q. Do you know, and are you acquainted with people acquainted with the persons whose names you have testified to?
A. I know lots of people acquainted with them.

Cross-examination by Mr. SANFORD:

Q. Did you ever hear of Mr. Perkins getting into trouble of any kind?
A. No, sir.
Q. Did you ever hear of his being arrested, or being in fights, or anything like that?
A. No, sir.
Q. How well have you known him lately?
A. Well, I have known him. He has worked before me considerably in the office.
Q. Have you known him outside of his going to your office on business?
A. No, sir.
Q. Have you known any of the others you have been asked about, Baker and Galloway, outside of their coming to your office on business?
A. That is all; in an official capacity.
Q. When they bring business to your office?
A. Yes.
Q. That is how you would see them?
1581 A. I see them outside occasionally, like any other citizen.
Q. You do not meet either of them outside very often, do you?
A. Not very often.
Q. How far do you live from Perkins?
A. Where I am living now, on the side of the mountain in the summer time, I am probably about two hundred yards from his residence, from where his mother lives.
Q. How far do you live from Baker?
A. Baker lives on William street, I think; I am not sure.
Q. How far from where you live?
A. Probably a mile and a half.
Q. How far do you live from Galloway?
A. Galloway lives at Sherman Heights, and I live on the side of the mountain.
Q. Several miles?
A. Several miles.
Q. Are you acquainted with Galloway's personal friends and acquaintances?
A. A good many of them.

Q. Where are they? Do you know people at Sherman Heights that he knows or that know him?

A. I know a good many people at Sherman Heights, but I couldn't just recall them at present.

Q. Who do you remember to have heard talk about Galloway one way or the other?

A. Nobody that I know of.

1582 Q. Did you ever hear anybody speak of him one way or the other that you remember?

A. No, sir; just casual conversation, probably, but nothing in regard to his character or anything of that kind.

Q. You never heard anybody speak of his character one way or the other, did you?

A. No, sir.

Q. You never heard them speak of Baker one way or the other, did you?

A. No, sir.

Q. Or of Perkins, one way or the other?

A. No, sir.

Q. All you mean is that as far as you know you have not heard anything against him, and your own opinion of him is good?

A. Yes.

Q. But you do not know what other people think about it, because you have not heard them speak about it?

A. Everybody has the right to their own opinion.

Q. But what you have given is your own opinion?

A. Exactly, and what I have heard of it.

Q. I asked you if you ever heard anybody speak of him, and I understand you have not.

A. I have not.

Redirect examination by Mr. CHAMLEE:

1583 Q. Are the same class of people that Baker, Perkins, and Galloway associate with people that are your associates also, to a greater or less extent?

A. Yes, sir.

Q. Do you know where Mr. Perkins' room is at the Hamilton Trust & Savings Bank Building, and do you know where that building is?

A. Yes, sir.

Q. People that man associates with, in the immediate neighborhood, were people that would associate around your office, because it was in the same neighborhood?

A. Yes, sir.

Q. How far was your office from the Hamilton Trust & Savings Bank?

A. Directly across the street.

Q. And the street is about a sixty or a seventy foot street?

A. Yes, about.

Q. How long was your office at that place?

A. One year.

Q. Where is it to-day?
A. Down on Seventh street.
Q. When was it you moved from down on the avenue?
A. Last September.
Q. Was it there from September?
A. It was there from the 19th of June until the first of September—a year and two or three months.
Q. And during that time Mr. Perkins lived right there within less than a block of your office all the time?
1584 A. Yes, sir.
Q. And was a deputy sheriff and worked before you; and was there any other justice of the peace there with you?
A. 'Squire Hogan was there.
Q. If there had been anything against Perkins' character, or if he had been a violent or turbulent man during any time you have known him, is it not probable you would have known about it or heard about it?
A. I think I would.
Mr. SANFORD. I object to the question as leading and to the answer as purely hypothetical and incompetent.

By Mr. CHAMLEE:

Q. During the time you have known them you never heard anybody say anything against either one of the men?
A. I never did.

J. J. BORK, a witness produced on behalf of the defendants, being duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Do you hold any official position in this county?
A. I do, sir.
Q. What position do you hold?
A. Justice of the peace.
1585 Q. Did you ever hold any other official position in this county?
A. I have been on the Chattanooga police force.
Q. Do you know the defendant, Marion Perkins?
A. I do.
Q. How long have you known Mr. Perkins?
A. I have known Mr. Perkins in the neighborhood of fifteen years.
Q. Do you think you know his general reputation and character in the community in which he lives?
A. I think I do.
Q. Is that general reputation and character good or bad?
A. It is good.
Q. From his general reputation and character is he entitled to full faith and credit on his oath in a court of justice?
A. Yes, sir.

By Mr. PRITCHARD:

Q. Do you know Matt Galloway?

A. Yes, sir.

Q. How long have you known him?

A. I have known Mr. Galloway about eight years.

Q. Do you know his general character in the community?

A. Yes, sir; I do. I think I do. I have worked myself with
1586 Mr. Galloway for a number of years, and have known him since.

Q. Is his character good or bad?

A. His character is good.

Cross-examination by Mr. SANFORD:

Q. Who did you ev[illegible] hear talk about Mr. Galloway, or Mr. Perkins, either one?

A. Why, I have heard a number of them in the shops. Do you wish me to call names?

Q. Yes, if you remember any.

A. I have heard John D. Vogt and Frank Smith and a number of others.

Q. When did you hear Mr. Vogt and Mr. Smith talk about him?

A. I have heard them speak of him often, probably twenty, or thirty, or forty different times.

Q. Who are they?

A. Mr. Vogt is a moulder. He works at the Ross-Meehan Foundry Company.

Q. Who is Smith?

A. A moulder also; foreman of the Malleable Iron Works.

Q. Who did you hear them speak about, Galloway or Perkins?

A. Galloway.

Q. Who did you ever hear speak about Perkins?

1587 A. I have heard a number of officers, and also shopmates. Mr. Perkins is also a moulder.

Q. Who do you remember?

A. I have heard Louis Boulton.

Q. Is he a moulder?

A. Yes, sir; all moulders.

Q. Were you ever out there yourself?

A. In the shops?

Q. Yes.

A. I worked in them for seventeen years; yes, sir.

Q. How long ago was it you worked out there?

A. It has been about five years since I worked there last.

Q. Have you ever heard of Mr. Galloway geting into any rows, scraps, fighting scrapes, or anything of that sort?

A. I don't recall any.

Q. You never heard of his being in any?

A. I might have heard of a little. Once a fellow came through the shop there—it wasn't hardly worth mentioning though, I don't think.

Q. Was it a fight he had at the shop?

A. It was a little disturbance. A party came through there in a drunken condition and they put him out of the shop; I don't know whether you would exactly call it a fight or not.

Q. You know better than I do. I did not see it. I am asking you what you know.

A. I say they put him out of the shop.

Q. Did you ever hear of his being in any fight at all?

1588 A. No, sir; not outside of that.

Redirect examination by Mr. CHAMLEE:

Q. These men have all worked for you since you have been a justice of the peace, as officers, more or less?

A. Yes, sir; in and out.

Q. If there had been anything against them you would likely have heard about it?

A. Yes, sir; I would more than likely hear it.

Mr. SANFORD. I object to the question as leading, and to the answer as based on a purely hypothetical case.

By Mr. PRITCHARD:

Q. State whether you are brought in contact with citizens here in the community that know these people.

A. Yes, sir; I am.

Q. Do you, or not, know people that know them?

A. I know a large majority of people that know them.

Q. You have the same acquaintances, have you?

A. Yes, sir; we run in the same run. Most all their friends are my friends.

Q. Do you know in what esteem—I am not asking whether you heard anybody say what esteem—but do you know regardless of whether they say it or not, in what esteem people hold them, how they regard them?

A. I do.

1589 Q. State whether or not you ever heard anything to their discredit.

A. I never did.

Q. You know, you say, the great majority of the people that know them, or the great number of people that do know them?

A. I do, sir.

Mr. CHAMLEE. That is all in the Perkins case.

Mr. PRITCHARD. We have a couple of witnesses here that we could examine this afternoon on behalf of other defendants.

R. A. WILLIAMS, a witness produced on behalf of the defendants, being first duly sworn by the commissioner, according to law, testified as follows:

By Mr. PRITCHARD:

Q. Where do you live?

A. Chattanooga.

Q. What business are you engaged in?

A. The livery business.
Q. How long have you lived in Chattanooga?
A. About 23 years.
Q. How long have you been engaged in the livery business?
A. Six years the 18th of next October.
Q. Where is your stable situated?
A. At 25 Carter street.
1590 Q. One of the principal streets of the city?
A. Right across from the Southern Hotel.
Q. Right across from the Southern Hotel?
A. Yes, sir; and four hundred or five hundred feet from the Read House.
Q. And three or four hundred feet from the Union Depot?
A. Right close to it; yes, sir.
Q. I will ask you whether you know the defendant, C. A. Baker?
A. Yes, sir.
Q. How long have you known him?
A. Ten years, I guess.
Q. Do you know his general character?
A. Yes, sir.
Q. How long since have you been acquainted with his general character?
A. I have known him ten years.
Q. Is his general character good or bad?
A. Good, so far as I know, sir, in every respect.
Q. I will ask you, Mr. Williams, whether or not you remember the time of the conviction of the negro Ed Johnson for ravishing this young girl out here.
A. Yes, sir; I don't remember the date, but I remember the time.
Q. You remember the occurrence?
A. Yes, sir; I don't know the date exactly now.
Q. I will ask you if you were called upon by any per-
1591 son to do anything in connection with Johnson, and what it was.
A. Yes, sir.
Q. Who called on you?
A. Mr. Baker.
Q. What did he want of you?
A. About two o'clock one afternoon he came and deputized me to hook up a pair of horses and three-seated rig and put the curtains down and have it ready at telephone call.
Q. Did you know what he wanted with it?
A. I asked him, but he wouldn't tell me.
Q. He refused to inform you?
A. I asked him if I couldn't send a darky. I told him I couldn't get off that afternoon. He said, "No, sir; you will have to go yourself."
Q. Did you go?
A. Yes, sir.

Q. What did you do?

A. I hooked up a pair of horses at two o'clock, put the curtains down of a three-seated rig, and let it stand there until ten minutes before four. I got a telephone call to come to Marble Hall with it at once, and I drove there, and when I got there Capt. Shipp was standing there. He motioned to me to go up to the jail.

Q. You say Marble Hall; you mean Turner Hall?

A. Yes; wherever it is; on Cherry street.

Q. Near Temple court?

1592 A. Right behind the jail—some hall. He motioned to me to drive right up. That space was open and I drove up. When I got up——

Q. You drove up to the jail?

A. Yes.

Q. From the rear of the jail?

A. The back. When I got there they brought three darkies out of the cellar.

Q. Out of the basement?

A. Yes. We carried them out Vine street. I couldn't tell where we were. I had never been there before and didn't know what street—at the lumber company, out very close to Citico, at the crossing—and stayed there until the Knoxville accommodation came by.

Q. The Knoxville train?

A. Yes; they put them on that.

Q. How far was that you took the prisoners—what distance?

A. I suppose a mile, the way we went, and may be a little further; all of a mile, I guess. We went pretty fast.

Q. Was that the depot from which the train left Chattanooga that you took them to?

A. No, sir.

Q. How far was it from the Central Depot, from which that train left?

A. They put them on at Citico, at a crossing.

Q. Is that where one railroad crossed another?

1593 A. No, sir; there is a street crossing, I reckon you call it.

Q. A street crosses the railway track there?

A. We drove right up close and waited for the train. I guess we got there not over three minutes ahead of the train. Capt. Shipp got out and flagged the train, and Mr. Baker was in back with these darkies.

Q. Mr. Baker and Capt. Shipp accompanied these prisoners?

A. Yes; Baker was in back with the negro supposed to be Ed Johnson. I never seen him before. He had the other two darkies handcuffed together, and they was in the middle.

Q. Do you know what other prisoners there were besides Johnson?

A. One was the darky that shot the deputy sheriff at Chickamauga.

Q. What was his name—Westfield?

A. Yes; and the other was some negro named Smith that committed some deed at the Orphans' Home.

Q. He attempted to rape a child at the Orphans' Home?
A. Yes.
Q. Those were the three prisoners?
A. Yes, sir.
Q. And the persons who had charge of them were Capt. Shipp and C. A. Baker, the defendant?
A. Capt. Shipp was on the front seat with me until we got to Vine street and he said——

Q. Never mind the conversation. The train was flagged
1594 and the prisoners were taken on the train. Did Baker and Shipp get on the train?

A. Yes, sir.
Q. And you brought the vehicle back?
A. Yes, sir.
Q. Are you accustomed to drive your own vehicles for people?
A. No, sir.
Q. You have drivers for that purpose?
A. Yes.
Q. You proposed to send one of your drivers then, but it was objected to?
A. Baker said he didn't want no nigger, he wanted me to go myself.
Q. He wanted you to go in person?
A. Yes.
Q. And you went?
A. Yes, sir.
Q. You say you had on the curtains to your vehicle?
A. Yes, sir; I had them all down.
Q. Do you know whether or not they took the precaution to cover the negroes with lap rugs, or anything of the sort?
A. Yes, sir. That is what I started to tell you while ago, and you wouldn't let me.
Q. I did not want the conversation, but what they did.
A. Capt. Shipp got back over there and covered the two negroes in the middle. He crawled back over the seat and
1595 covered them up with a lap robe. They got down in under there. We passed by a lot of negroes working on the railroad over there, I reckon ten or fifteen negroes, and he crawled back over the seat and covered these two negroes up with a lap robe.
Q. When you passed that crowd?
A. We passed them then, I reckon, when he crawled back.
Q. Was it because of any apprehension that those men would lynch him, or what was the apprehension?
A. I don't know about that. He just did it.
Q. I will ask you to state whether or not that was the same day Johnson had been convicted?
A. Yes, sir; that afternoon about ten minutes before four, I think the time was.
Q. Do you remember what date it was?

A. No, sir; along February somewhere.

Q. About the 9th of February?

A. I don't know; I can't tell the date. It was that afternoon. He had been convicted that day along about one of two o'clock.

Cross-examination by Mr. SANFORD:

Q. That was in February, and the same day he had been convicted and found guilty?

A. Yes, sir.

Q. In the Circuit Court?

1596 A. Yes, sir. I don't know the date, because I didn't keep up with the dates.

Q. I mean it was the same day he had already been found guilty by a jury.

A. Yes; that is how we came to go.

Q. You do not know what any of these men had really done, but you know the offenses they were charged with?

A. Yes, sir.

Q. You were not a witness to the commission of any of the offenses?

A. No, sir.

Q. When you say you know Baker's general character, do you mean you know what you think of him, or what other people think of him?

A. I never heard anything against him.

Q. I did not ask that.

A. I never heard anything against him.

Q. When you say you know his general character, do you mean you know what you think about him, or that you know what other people think about him; which do you mean?

A. I mean both. I know what I think of him, and I never heard anything about other people saying anything.

Q. Did you ever hear other people speak of him one way or the other, either good or bad?

A. I think I have; yes, sir.

Q. You think you have?

A. Yes, sir.

Q. Who?

1597 A. I couldn't just recall. I never heard anything against him.

Q. I am not asking that. I am trying to state my questions clearly, so you can understand them. Have you ever heard anybody else speak of him one way or the other?

A. I can not say.

Q. Do you remember ever having heard his character spoken of by anybody else?

A. His character?

Q. Yes, his character.

A. No, sir; I never heard it.

Q. What you mean is that you think he has a good character, and you never heard anybody else say anything bad about him; and that is about all you know?

A. That is about all I know.

Redirect examination by Mr. PRITCHARD:

Q. I will ask you whether the associates of yourself and Mr. Baker have been the same person, and the same character of people?

A. Yes.

Q. And in the same community?

A. I have known him ten years.

Q. I will ask you whether Mr. Baker has been in the livery business?

A. Yes.

Q. You have been in that business for years. How long
1598 was Baker in that business?

A. Well, I don't know how long.

Q. Where was his place?

A. Out on Montgomery avenue. He was in business before he went in as deputy sheriff. I have had lots of dealings with him.

Q. You have known him intimately for years, you say?

GEORGE W. EDWARDS, a witness produced on behalf of the defendants, being first duly sworn by the commissioner, testified as follows:

By Mr. PRITCHARD:

Q. What business are you in?

A. The grocery business.

Q. Where is your store?

A. At 252 East Montgomery avenue, this city.

Q. How long have you been in the grocery business?

A. I have been in the grocery business about eighteen years; about eight years at this location.

Q. How long have you lived in Chattanooga?

A. In Chattanooga and the suburbs eighteen years, about.

Q. I will ask you whether you hold any position in the county?

A. Yes, sir; I am a justice of the peace.

Q. Do you know the defendant, C. A. Baker?
1599 A. Yes, sir.

Q. How long have you known him?

A. About eight years.

Q. Do you know his general character?

A. Yes, sir.

Q. Is his character good or bad?

A. It is good.

Q. Do you know Matt Galloway?

A. Yes, sir.

Q. How long have you known him?

A. Why, I think about twelve years.

Q. Do you know his general character?
A. Yes, sir.
Q. Is it good or bad?
A. It is good.

Cross-examination by Mr. SANFORD:

Q. What do you mean by general character, 'Squire?
A. I suppose it is the general reputation or standing of a man in the community in which he lives, and the circle in which he moves.
Mr. PRITCHARD. A very good definition.

By Mr. SANFORD:

Q. You have a general acquaintance with the same people that Galloway has?
A. Well, yes, to a considerable extent. I know Mr. Gallo-
1600 way first at Sherman Heights. I was in business there, I think, when he went to Sherman Heights, and in a small place I think we get more intimately acquainted with people usually than we do in larger places.
Q. How long has it been since you moved to Sherman Heights?
A. Eight years.
Q. How long have you been a member of the County Court?
A. Since last August. I was elected last August.
Mr. SANFORD. That is all.
Mr. PRITCHARD. I believe that is all. I do not think we can get any more witnesses this afternoon.
Mr. CHAMLEE. Then we will take an adjournment until Monday?
Mr. SANFORD. It is agreed that we shall adjourn until next Monday, if it is agreeable to the commissioner.
The COMMISSIONER. We will adjourn until Monday morning at nine o'clock.

(The hearing, at 3.20 o'clock p. m., was adjourned until Monday, June 24, 1907, at 9 o'clock a. m.)

1601 CHATTANOOGA, TENNESSEE, *June 24, 1907.*

The hearing was resumed at 9 o'clock a. m.
Present: James D. Maher, the commissioner; Messrs. Sanford and Penland; and counsel representing the respective defendants.

DAVID W. LAMON, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. Your name of D. W. Lamon?
A. Yes, sir.
Q. Where do you live?
A. Hill City.
Q. Have you ever held any official position in Hamilton County?
A. Yes, sir; justice of the peace.

Q. Anything else?

A. I was representative once; yes, sir.

Q. Do you know the defendant, Mr. Perkins?

A. Yes, sir.

Q. Did you know him in March, 1906, at the time it is said Ed. Johnson was taken from the county jail and lynched at the county bridge?

A. Yes, sir.

1602 Q. Did you see Mr. Perkins that night?

A. Yes, sir.

Q. Where did you see him?

A. I saw him first down there when he got off of a car at Seventh and Market.

Q. At Seventh and Market streets, in Chattanooga?

A. Yes, sir.

Q. Was anybody with him?

A. He had a prisoner, as I found out a little bit after. When I first saw him get off the car with the man, the fellow seemed to be drunk, was what attracted my attention. I just stopped until they got off to see whether he was arrested, or whether it was the conductor putting him off.

Q. It was Perkins and a prisoner, you say?

A. Yes.

Q. Which way was the car that they got off of going?

A. Coming down Market street.

Q. Was that, in coming down Market street, going north?

A. Yes, sir.

Q. What direction is Montgomery avenue from Seventh street?

A. From Seventh it is south.

Q. Was that car coming from in that direction?

A. Yes, sir.

Q. When Perkins got off with the prisoner, where did he go? In what direction did he go from Market and Seventh?

1603 A. Right up Seventh street to the jail.

Q. Did you see him go up Seventh street straight to the jail?

A. Yes, sir. I followed him up to see where he was going.

Q. Did you see him take the prisoner inside—go into the jail with the prisoner?

A. Well, I don't remember that I saw him after he started up the steps with him, but I saw him start in the steps with the man.

Q. That is, the approach to the jail?

A. Yes, sir.

Q. What time of night was that?

A. I couldn't tell just what time. It must have been somewhere about 11 o'clock—close to 11 o'clock.

Q. How do you fix the hour as being about 11 o'clock?

A. I had been to the opera house, and was coming from the opera house when I saw him take this man off the car.

Q. Had there been a play at the opera house that night?
A. Yes, sir.
Q. Had it broken up?
A. It was just over, and I was going home.
Q. How do you fix that as being the same night as that on which Ed. Johnson was lynched?
A. We went up Seventh street. Mr. Ashbrook was with me. We went up Seventh street to Walnut, and we were watching this man to see where he was going to take the prisoner, whether he
1604 was going to take him to the jail or bring him over on Ninth street to the justice of the peace. When we got up there we met—we didn't meet him either. He was coming from the river, or going south on Walnut.
Q. Who was that man?
A. Arthur Vale. He says, "They have lynched that nigger." I says——
Q. I do not care for the conversation, except that you found out from Vale that Ed. Johnson had been lynched?
A. That is how it came; yes, sir.
Q. Where did you live at that time?
A. Hill City.
Q. Was it on your way home to come across the bridge?
A. Yes.
Q. Did you come out on Walnut street to the bridge then?
A. Yes, sir.
Q. Did you see the body of Johnson?
A. Yes, sir.
Q. So in that way you know it was the same night?
A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. You understood from that remark that was made to you that Ed. Johnson had been lynched. That is what you understood, was it?
A. Yes, sir.
Q. Are you a justice of the peace now?
1605 A. No, sir.
Q. When were you, last? Did you not say you were a justice of the peace, or had been?
A. I have been; yes, sir. That has been, I guess, agout eight years, I think, or something like that.
Q. What business are you in now?
A. I have got a feed barn down on the corner of B and East Ninth street.
Q. You have not any other way of fixing the night you saw Perkins with the prisoner other than you have stated? Is there any other way in which you recollect what night it was?
A. Other than what?
Q. Than what you have already stated. Have you anything else to fix it on your mind?

Mr. CHAMLEE. You were talking among yourselves at the time he testified, or you would not ask that question. He said he saw the dead body on the bridge.

By Mr. SANFORD:

Q. I will ask you if there is any other way? I repeat the question.

A. Yes, sir; after I saw Mr. Vale and he said they had gone with the darky, as I went on home I saw him there on the bridge, dead.

Q. Who was there when you got there?

A. On the bridge?

Q. Yes; on the bridge.

A. There was several men there.

1606 Q. Who do you remember seeing?

A. I remember seeing Mr. Shelton—A. E. Shelton. I remember Dr. Holtzclaw. I remember him by him putting his hand on the darky, and I saw Squire Ware. As I remember, Squire Ware was leaning up against the banisters.

Q. Who else did you see?

A. I didn't see anybody else I knew, except the gentleman with me.

Q. Who was that?

A. Charlie Bush. He and I went across together.

Redirect examination by Mr. CLIFT:

Q. Are you acquainted with Matt Galloway, the deputy sheriff?

A. Yes, sir.

Q. How long have you known him?

A. I think about seven years; something like that.

Q. Do you know his general character?

A. I guess so. I used to live pretty close to him.

Q. Is that character good or bad?

A. Good, as far as I ever heard, until I saw this little piece in the paper Sunday about him, I believe.

Q. From that character, would you give him full faith and credit on his oath in a court of justice?

A. Certainly I would.

1607 Cross-examination by Mr. SANFORD:

Q. How well do you know him?

A. I have known him pretty tolerably well for several months. He boards a horse at my barn. I have known him for a good long while before that, but then I have been pretty closely acquainted with him since that time.

Q. Do you know where he lived before he came here?

A. Before he came to this county?

Q. Yes.

A. No, sir; I do not. He was living in Sherman Heights the first I went to see him.

Q. How long ago was that?

A. I think about seven years; something like that.

Q. Is he living there now?

A. I think he is; yes, sir.

Q. Do you know his general associates? Are you acquainted with them? Are you intimate with his friends and neighbors out there, and associates?

A. Yes, sir; quite a good many of them.

Q. Did you ever hear any of them speak about him one way or the other?

A. Only in the best of terms. We are trying to get him appointed out there as a school director.

Q. You are trying to get him appointed?

A. They are; some of them; yes, sir.

Q. Who have you heard speaking about him?

A. There was a Mr.——

1608 Q. I do not ask what they said, but who you have heard speak about him?

A. Who?

Q. Yes.

A. Just wait until I think of his name. Mr. Henry Ray was speaking to me the other day about him.

Q. Can you think of anybody else?

A. Not on that particular question; no, sir.

* * * * * * *

1614 MARION PERKINS, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. CHAMLEE:

Q. What is your name?

A. Marion Perkins.

Q. Were you a deputy sheriff in March, 1906?

1615 A. Yes, sir.

Q. Were you working on a salary or on fees?

A. I was working on fees.

Q. Where did you room, or live, at that time?

A. Out on Montgomery avenue.

Q. In Chattanooga?

A. Yes, sir.

Q. Were there any justices of the peace offices near your home?

A. Yes, sir.

Q. What justices of the peace were there?

A. Squire Gahagan and Squire Watson.

Q. That is Squire George W. Gahagan?

A. Yes, sir.

Q. And Squire Charles Watson?

A. Yes, sir.

Q. Is that the same Charles Watson that was here as a witness the other day?

A. Yes, sir.

Q. In this case?

A. Yes, sir.

Q. Do you remember the night Ed. Johnson was lynched?
A. Yes, sir.
Q. Where were you that night?
A. I was out on Montgomery avenue.
Q. Did you see the witness Frank Wallace that night?
A. Yes, sir.
Q. Where did you see him?
1616 A. The first time I seen him, I seen him in the saloon.
Q. What time of night was it when you saw him the first time?
A. About half past 9; between half past 9 and 10 o'clock, there somewhere. I couldn't remember exactly.
Q. What were you doing in his saloon?
A. I was in there looking for a nigger.
Q. A prisoner?
A. Yes, sir.
Q. After you saw him that time, and between that time and the time you next saw him, had you been back to the justice of the peace's office?
A. Yes, sir.
Q. Where were you when you saw him the second time?
A. On the corner of Montgomery avenue and Market street.
Q. Was anybody with you?
A. I don't remember now.
Q. Did you have any prisoner in your charge?
A. Yes, sir.
Q. How long had you had that prisoner?
A. How long had I had that prisoner?
Q. Yes. How long had you had him in your custody?
A. I don't know—about twenty minutes.
Q. Where did you get that prisoner, and where were you going with him.
1617 A. I was sitting up there in the office, and some man that runs——
Q. Whose office are you referring to?
A. Squire Gahagan's.
Q. The justice of the peace?
A. Yes, sir. A night watchman of some hotel brought him up there and turned him over to me.
Q. Do you remember the charge he was brought in under?
A. Yes, sir.
Q. What was it?
A. A public drunkard.
Q. Was the man intoxicated at that time?
A. Yes, sir.
Q. What did you do with the prisoner after he was turned over to you?
A. I taken him over on the corner of Montgomery and Market and put him on a car and taken him up and put him in jail.

Q. In the county jail?
A. Yes, sir.
Q. Do you know what time of night it was when you got to the jail; or about what time it was?
A. It must have been pretty close to 11 o'clock.
Q. When you got to the jail did you learn anything about the lynching of Ed. Johnson?
A. Yes, sir; I seen somthing had been done.
Q. Did you discover that there had been a lynching, or learn it at that time?
A. Yes, sir.
1618 Q. Where did you go after you got there and found out about Johnson having been taken out?
A. I went to the bridge.
Q. Did you see any other deputy sheriff about, after leaving the jail and starting towards the bridge?
A. Yes, sir.
Q. Who was it?
A. I met Matt Galloway and Charlie Baker.
Q. Matthew Galloway and Charlie Baker?
A. Yes, sir.
Q. How were they traveling?
A. They was running in.
Q. Running in where?
A. Running in the jail. I was coming out.
Q. Did you see Galloway come out of the jail?
A. Yes, sir.
Q. Did he have anything?
A. Yes, sir.
Q. What was it?
A. He had a gun.
Q. Did you see a street car about that time?
A. Yes, sir.
Q. How did you all go from the jail to the bridge?
A. We went on the car.
Q. All on the same car?
A. Yes, sir.
Q. When you got to the bridge did you find the body of Ed. Johnson?
1619 A. Yes, sir.
Q. Was he dead or alive at that time?
A. He was dead.
Q. Had the lynching party gone, and was everything all over at that stage of the game?
A. I don't know; there was some people there. There was not many people there when I got there.
Q. Johnson was already dead. He was not lynched after you got there?
A. Sir?

Q. Johnson was not lynched after you got to the bridge?

A. No, sir.

Q. Did you know or hear of there being anybody fixing up to lynch Johnson on that night?

A. No, sir.

Q. Did you have any intimation from any source whatever?

Q. Did you have anything to do with any conspiracy or confederation, in any manner whatever, with any person?

A. No, sir.

Q. To aid, either by absenting yourself from the jail or otherwise, in the lynching of Ed Johnson?

A. No, sir.

Q. Did you know anything about it?

A. No, sir.

Q. Or have any reason to suspect that anybody else would have anything to do with the lynching?

A. No, sir.

1620 Q. When you left the jail and started on your way towards the bridge, what was your mission up there; what was your idea in going to the bridge?

A. I was going up there to try to get him if I could.

Q. Your idea was, if you could do so, to help take Ed Johnson away from the mob?

A. Yes, sir.

Q. Did you know what Galloway was going to do; what his mission was, in running into the jail and getting a gun and running out and catching the car?

A. I don't know what he was going to do, but I guess——

Mr. SANFORD. I object.

Mr. CHAMLEE. They will not let you tell what he said he was going to do. They will let you tell it, but we concede that it is incompetent to let you prove Mr. Galloway's assertions.

By Mr. CHAMLEE:

Q. Mr. Perkins, after the trial of Ed. Johnson, which was about February 9, 1906, between that time and time *time* he was lynched, was there any guarding of the jail or any excitement around the jail, to your knowledge?

A. No, sir.

Q. Did you ever guard, or act as a guard at the jail at any time after the trial of Ed Johnson?

A. No, sir.

1621 Q. Did you ever know or hear of anything that made you think it was necessary that there should be guards about the jail in order to protect and safely keep Ed Johnson as a prisoner?

A. I didn't understand the question.

Q. Did you ever know or hear of anything during the time Johnson was here, after he was brought back from Knoxville, for the ten days previous to the lynching, that would create in your mind

an impression that Johnson was in danger, or that any extra precautions ought to be taken for his safety?

A. No, sir.

Q. Were you, in your travels about the city as an officer, brought into contact with the criminal class that has been termed the "lawless element?" Did you come in contact with them, as well as with business people, so that if there had been any general talk you would have heard about it?

A. Sure.

Mr. SANFORD. I object to that as leading and suggestive.

By Mr. CHAMLEE:

Q. Did you hear from the lawless element, or any other element, any threats of lynching Ed Johnson, or any talk that there was any such impression as that prevailing in the community previous to the lynching?

A. No, sir.

Q. I will ask you to state whether or not the lynching of Johnson came to you as a very great surprise.

1622 A. Yes, sir.

Mr. SANFORD. I object to that as incompetent and irrelevant.

By Mr. CHAMLEE:

Q. Did you ever enter into any conspiracy with anybody to lynch Ed. Johnson?

A. No, sir.

Cross-examination by Mr. SANFORD:

Q. You got there at the jail about eleven o'clock that night, as I understand you?

A. Pretty close to eleven; between half past ten and eleven.

Q. You understood that Ed. Johnson had already been lynched when you got there, did you not?

A. After I got there I did.

Q. After you got to the jail?

A. After I got to the jail.

Q. You knew that?

A. Yes, sir.

Q. The lynching was all over, you understood, when you were at the jail; you heard that?

A. No, sir; they had done gone with him. I didn't know that they had lynched him or not.

Q. Did you not understand before you left the jail that he had already been lynched?

1623 A. No, sir.

Q. You did not?

A. No, sir.

Q. Who told you they had taken him; do you remember?

A. I seen the door broke open, and heard them all around there talking about it.

Q. You do not remember who told you?
A. No, sir; I do not.
Q. Did the sheriff go with you?
A. No, sir.
Q. Who went with you?
A. Me and Galloway and Baker.
Q. Where did you get your guns?
A. I didn't have no gun.
Q. You did not?
A. No, sir; nothing but a pistol.
Q. Did Galloway have a gun?
A. Yes, sir.
Q. Where did he get his?
A. He got it there in the office.
Q. Did Baker get a gun?
A. No, sir.
Q. Did he have a pistol?
A. I guess he did.
Q. Had you not heard before you started that there was some shooting at the lynchers, or at the crowd on the bridge, from people down on the side, supposed to be negroes, shooting up at the crowd on the bridge?
1624 A. No, sir.
Q. You had not heard that?
A. No, sir.
Q. Did you hear it after you got there?
A. After I got there, I think—I don't remember now. I heard it next day.
Q. I am asking about what you heard that night?
A. I don't think I did.
Q. Did you hear Matt Galloway say that night, after he came out there, that he would see those people were protected from those negroes shooting down there on the side?
A. No, sir; I did not.
Q. You did not hear that?
A. No, sir.
Q. Was there anything of that sort?
A. No, sir.
Q. Who is the man you arrested that night? What is his name?
A. I can't remember his name.
Q. Was he white or black?
A. He was black.
Mr. CHAMLEE. We have the record, if you want it.
Mr. SANFORD. I have not asked for it. I will ask for it when I need it.
By Mr. SANFORD. You do not remember his name. You remember his color, but you do not remember his name?
A. No, sir.
1625 Q. How long had you been a deputy?
A. I have been a deputy over two years.

Q. You had been at that time?
A. No, sir; not at that time.
Q. Had you ever guarded the jail at night?
A. Yes, sir.
Q. Did you guard it during the trial, at night? Were you one of those deputies?
A. During the trial?
Q. During the Ed. Johnson trial.
A. I didn't guard it during the trial.
Q. You did not at all?
A. No, sir.
Q. You never did extra guard duty there, or stay there extra during the Ed. Johnson excitement at all?
A. Yes, sir.
Q. When was that?
A. When they first caught him, after the first mob.
Q. He was just there about a day, was he not?
A. I don't remember how long he was there.
Q. Was he not arrested on the 23d, and did not the sheriff take him off to Nashville on the 24th?
A. I don't know.
Q. What is your best recollection?
A. I don't remember.
Q. You do not remember?
A. No, sir.
1626 Q. The only time you guarded him was at the time of the first mob?
A. That is the only time I guarded him.
Q. That was just at the time of the first mob?
A. Yes, sir.
Q. And the guarding after that, whatever was done, you had no part in?
A. I don't remember now.
Q. That is your recollection. You are testifying to the best of your recollection, of course. That is your best recollection, that you did not guard him any more after that first time?
A. I don't remember. I stayed up there a lot, and I couldn't remember.
Q. You stayed there a lot. Try and remember it.
A. I stayed up there three or four nights, and may be longer than that.
Q. Did you stay again during the trial?
A. I don't remember.
Q. You just can not remember whether you stayed there during the trial or not?
A. I don't remember.
Q. You know you stayed a lot, but whether you were guarding Ed. Johnson particularly, you do not remember?
A. I know there was some of the rest of them in there too.

Q. Ed. Johnson and others?

A. Yes, sir.

1627 Q. But when it was and how long it was, you do not recollect? Is that right?

A. Yes, sir.

Q. That is correct. How many times were you at the jail during the day of the lynching?

A. I don't remember that I was there at all.

Q. What were you doing that day?

A. I couldn't remember what I was doing. I guess I was working.

Q. What is that?

A. I guess I was working.

Q. You guess you were working?

A. Yes.

Q. You guess. Do you have any recollection about where you were?

A. Where I was during the day?

Q. Yes.

A. No.

Q. Can you tell us?

A. No, sir.

Q. Do you remember whether you had heard the Supreme Court had granted an appeal?

A. I don't remember.

Q. You do not remember whether you had or not?

A. No, sir.

Q. Nobody had told you that they intended to lynch Ed Johnson?

A. No, sir.

1628 Q. Nobody at all?

A. No, sir.

Q. Do you remember anybody you saw at the jail that day when you were there during the day—but you do not remember being there, I understand?

A. I might have been there; I don't know. Sometimes I don't go there in a week.

Q. When you got there, about half past ten or eleven, as I understand you—if I am wrong, correct me——

A. Yes, sir.

Q. Who did you find there?

A. I seen Capt. Shipp, Judge McReynolds, and Mr. Whittaker.

Q. Was Frank Jones there?

A. I don't think—I don't remember.

Q. Was Jailor Gobson there?

A. Yes, sir; I seen him.

Q. And Charley Baker?

A. Well, he came there while I was there.

Q. And Galloway came in?

A. Yes, sir.

Q. Who else did you see there?

A. I don't remember anybody else.
Q. You do not remember anybody else you saw there?
A. No, sir.
Q. Was there anybody there that you did not know?
A. I don't know; I didn't notice them much.
1629 Q. When you got out to the lynching did you meet the lynching party coming back?
A. No; there was people going and coming.
Q. Did you see anybody with guns?
A. No, sir.
Q. Did you see anybody with masks?
A. No, sir.
Q. Who did you see out there? Who do you remember?
A. I went over on the car.
Q. I say, when you got there who did you see?
A. I don't remember.
Q. Can you not tell us anybody? Do you remember anybody?
A. There was not very many there when I got there. They had done telephoned for the ambulance.
Q. They telephoned for the ambulance before you got there?
A. Yes, sir.
Q. That is what you understood when you got there?
A. Yes, sir.
Q. Was Dr. Holtzclaw there?
A. If he was I don't remember seeing him.
Q. Was 'Squire Ware there?
A. If he was I don't remember seeing him.
Q. Did you hear who had telephoned for the ambulance?
A. No, sir; I did not.
Q. Did you see Deputy Sheriff Taylor there that night,
1630 either at the jail or at the bridge?
A. If I seen him I didn't notice him.
Q. You do not recollect it if you did?
A. No, sir.
Q. Did you see Fred Frawley?
A. I seen him when I was leaving the jail.
Q. You saw him when you were leaving the jail?
A. Yes, sir.
Q. Where did you see him?
A. He was coking up the street, running.
Q. That was when you were leaving the jail. Did he go out with you to the bridge?
A. No, sir; he never went with me. If he did I didn't see him.
Q. You did not see him out there?
A. No, sir.
Q. As I understand you, Capt. Shipp did not go. You have already stated that?
A. He might have went after I left.

Q. I mean, so far as you know. Of course you are only testifying about what you know about it.

A. Yes, sir.

Q. Did you not understand that one reason why the lawyers that defended Ed Johnson originally, and the committee of lawyers that advised with them, decided not to appeal his case to the supreme court of the State was that they were of the opinion that if they did and the case was delayed he would be lynched?

1631 A. No, sir.

Q. You did not hear that?

A. No, sir.

Q. If that was the fact you do not know it?

A. If it was, I don't know it. I never heard it.

Q. Did you read the newspapers about this Ed. Johnson affair as it was going on?

A. Yes, sir.

Q. Do you remember whether you read the Chattanooga Times the day after it was decided not to appeal?

A. I don't remember.

Q. You do not remember seeing a signed statement in the Chattanooga Times from Mr. Thomas, the attorney?

A. No, sir.

Q. Is it not your opinion that the fact that there was to be a delay in the final settlement of the Ed. Johnson case would cause a danger of lynching?

A. No, sir.

Q. You do not think that delay would have anything to do with it?

A. No, sir.

Q. You do not?

A. No, sir.

Q. You do not think the anger of a mob and the spirit of lawlessness is due at all to the fact that there was going to be a delay?

A. I don't understand that.

1632 Q. You know what I mean by lawless spirit, the spirit of the lawless who want to have a lynching and hang a man before the law gets through with him. You do not think the fact that there was to be another delay in it, under the order of the Supreme Court, would make it any more probable that a lynching would occur, than before?

A. No, sir.

Q. You think there was no more danger to be apprehended that he would be lynched after it was known that there was to be a delay under the order of the Supreme Court than there had been the day before, when it was thought he would be hung under the order of the state court?

A. No, sir; I don't think so.

Redirect examination by Mr. COOKE:

Q. You stated a while ago that you saw Fred Frawley running. In what direction was he running?

A. He was running towards the jail. He was coming up Walnut street.

Q. When was that?

A. Just as I was leaving.

Q. Where did you see him coming; up what street?

A. Walnut street, right in front of the jail.

Q. He was coming up Walnut street right in front of the jail?

A. Yes, sir.

1633 Q. Running towards the jail?

A. Yes, sir.

Mr. CHAMLEE. We rest here in the Perkins case.

Testimony on behalf of the defendant, Sheriff Joseph F. Shipp, and his deputies, as a class.

M. N. WHITTAKER, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. LYNCH:

Q. Mr. Whittaker, what official position do you hold in this circuit?

A. I am attorney-general for the sixth judicial circuit of Tennessee.

Q. I will ask you if that embraces the county of Hamilton and the city of Chattanooga?

A. It does.

Q. How long have you been attorney-general here?

A. I have been attorney-general for nearly five years.

Q. How long were you assistant attorney-general immediately prior to that time?

A. About seven years.

1634 Q. I will ask you if during the last twelve years you have been actively engaged in the prosecution of criminal cases in Chattanooga?

A. I have.

Q. I will ask you if you are well acquainted with the criminal court, and the officers of the criminal court in Hamilton County?

A. I have.

Q. I will ask you if you are acquainted with the criminal classes; that is to say, with the people who are connected with the criminal courts as defendants?

A. Yes, sir; those that have been before me.

Q. I will ask you whether or not during that time you have, in a large measure, become acquainted with what is termed the lawless element of Hamilton County?

A. I think that is necessarily true.

Q. Who is the judge of your criminal court?

A. Judge S. D. McReynolds.

Q. I will ask you if he was judge of the criminal court at the time of the Ed. Johnson trial in 1906?

A. He was.

Q. You know Capt. Shipp, the sheriff, of course?

A. I do.

Q. Do you remember the circumstance of Ed. Johnson being indicted here for criminal assault?

A. Yes.

Q. I will ask you whether or not you conducted the prosecution in that case?

1635 A. I did.

Q. When was the first time, Mr. Whittaker, that you had an interview with Capt. Shipp, the sheriff, with respect to that case?

A. Soon after the arrest was made.

Q. Capt. Shipp was in charge of that case, was he not?

A. He was.

Q. I will ask you whether or not you had an interview with Capt. Shipp, the sheriff, in the presence of the attorneys for the defendant, Ed. Johnson, before the trial of the case and very soon after he was arrested on the charge of committing the assault?

A. I had.

Q. I will ask you to state what occurred between Capt. Shipp and the attorneys for Ed. Johnson in that interview?

Mr. SANFORD. I note an objection to the testimony called for as incompetent and irrelevant, and as hearsay testimony.

Mr. LYNCH. I do not mind stating, Mr. Commissioner, that the object of that testimony and of a good deal of testimony that will be introduced will be to show the feeling of Capt. Shipp toward the defendant and his attempt to treat him with consideration and fairness.

Mr. SANFORD. I object to the testimony as incompetent for that or any other purpose.

By Mr. LYNCH:

1636–1637 Q. Answer the question.

A. Will you repeat the question, please?

The stenographer read the pending question, as follows:

"Q. I will ask you to state what occurred between Capt. Shipp and the attorneys for Ed. Johnson in that interview?"

The WITNESS. Capt. Shipp was very anxious, as well also as the judge and myself, that no mistake be made with reference to the fact as to whether or not we had the man that committed the outrage; so he suggested that he would very gladly put opposing counsel in possession of all the fact that he knew, if it was proper to do so. I said to him that that was unusual, in fact unheard of, but that I believed it was a proper suggestion. Acting on that suggestion I called the counsel for the defendant, Ed. Johnson, and Capt. Shipp into Judge McReynolds' office, and in his presence had Capt. Shipp state to opposing counsel all the facts that were in our possession, giving the names of the witnesses and what each would prove, and where each lived, so that opposing counsel might have full and fair opportunity to investigate the soundness of the state's testimony, in order that no

mistake might occur and that we might possibly convict an innocent man. That was what was done.

Mr. SANFORD. The objection is repeated to all that testimony, on the ground of its incompetency.

Mr. LYNCH. I understand.

By Mr. LYNCH:

1638 Q. By "opposing counsel" you mean, of course, the attorneys for Ed. Johnson?

A. Yes, sir.

Q. I wish you would state, if you know, what Capt. Shipp did and what measures he took to protect the prisoner during the time immediately following his arrest and at the trial. State it in your own way.

Mr. SANDFORD: So that we may save the necessity of a continual repetition of objections, I desire to object, on the same ground, to all statements made by Capt. Shipp, both before and after, on the ground that they are hearsay, and statements in his own behalf, and are incompetent. So that that objection may be taken as being made to all statements that may be made as to what Capt. Shipp said. Statements as to his actions I do not object to.

Mr. LYNCH: We may consider that objection as made to all the other questions, to save repetition.

Mr. SANFORD: Yes.

The WITNESS: I will ask the stenographer to read the question.

The stenographer read as follows:

"Q. I wish you would state, if you know, what Capt. Shipp did and what measures he took to protect the prisoner during the time immediately following his arrest and at the trial. State it in your own way."

The WITNESS: Almost immediately after the prisoner was arrested and put in jail, Capt. Shipp carried him to Nashville by the order of the criminal judge.

1639 By Mr. LYNCH:

Q. Pardon me for interrupting you. I will ask you, before you start in on that, whether or not there were two negroes arrested; another besides Ed. Johnson?

A. Yes; there was another.

Q. He had been arrested the night before Ed. Johnson was arrested?

A. Somewhere about the time. I do not remember whether it was the night before or not.

Q. As I understand, Capt. Shipp took both negroes to Nashville?

A. I do not know whether he did or not. I have an impression that he did, as there was some feeling against the other negro, Floyd Westfield. He was charged with murder, as I remember. Anyhow he carried this man and Johnson to Nashville and brought him back for trial. After the trial, and the verdict of guilty, Capt. Shipp suggested to Judge McReynolds, in my presence, that he would carry the prisoner, Johnson, to Knoxville for safe-keeping, and Judge

McReynolds told him, and so did I, that we thought that was entirely unnecessary; that we saw no evidences of contemplated violence——

Mr. SANFORD: The same objection is made to statements to Capt. Shipp as to statements from him. That is understood.

Mr. LYNCH: Yes; our object in showing that——

Mr. SANFORD: I do not want to waive my objection, but I do not want to keep interrupting the witness to make the same objec-
1640 tion. It is understood the objection is made to all conversations of Capt. Shipp, either statements to him or from him.

Mr. LYNCH. So that you may know our object in proving that, I will say that it is to show what was in Capt. Shipp's mind, and what information he had as to the danger and peril in which this man would be in remaining in the jail in Hamilton County.

The WITNESS. Now, if the stenographer will tell me where I left off I will proceed.

The stenographer read as follows:

"After the trial and the verdict of guilty Capt. Shipp suggested to Judge McReynolds, in my presence, that he would carry the prisoner, Johnson, to Knoxville for safekeeping, and Judge McReynolds told him, and so did I, that we thought that was entirely unnecessary; that we saw no evidences of contemplated violence——"

The WITNESS (continuing). To the prisoner, and Judge McReynolds told him if he carried him he would have to do so on his own responsibility. Capt. Shipp remarked that he was worn out and broken down and needed rest, and he did not want any anxiety on his mind with respect to the safety of the prisoner, and that he would like to carry him to Knoxville; and he accordingly did so.

By Mr. LYNCH:

Q. That was after his conviction, was it?

A. Yes, sir.

Q. Prior to that time, I will ask you if there was any assault
1641 made on the jail here in Hamilton County, while the prisoner was here, or about that time?

A. There was an assault made on the jail prior to that time, but the prisoner was not there. Capt. Shipp had got off to Nashville with him before that assault was made.

Q. That was the first time Capt. Shipp took him away?

A. Yes, sir.

Q. I will ask you if you saw that assault, or any part of it?

A. Yes, sir; I saw a whole lot of it.

Q. Just describe what you saw there.

A. Oh, well, without going into circumstantial detail of it, I had taken supper that night with Mr. Will Cummings, and after supper he and I were coming down town, and met Joe Richardson, a deputy of Capt. Shipp, out looking for assistance. He told us there was a mob at the jail, and we went immediately to the jail and found the offices of the jail full of people. I could not tell who was participating in the mob and who was not. Judge McReynolds was up

trying to talk to the people to quiet them, and several of them had their guns; and as many as could get there were standing immediately in front of the entrance of the jail, which was at that time, when I got there, being guarded by Mr. Matt Galloway and Mr. Brown, two of Capt. Shipp's deputies. I remember very distinctly that I heard Mr. Galloway say, "The first man that strikes this door or undertakes to get in here, I am going to kill him, whether he is friend or foe, and don't you all be mistaken about that."

1642 Q. I will interrupt you to ask whether that is Mr. Matt Galloway, a defendant in this case?

A. Yes, sir.

Q. And the Mr. Brown you refer to is Capt. Brown, the jailer there?

A. Yes. So that confusion and disorder reigned for quite a while. Chief Moseley came to me and said he believed he could disarm those men that had guns there. There was some apprehension that we had better act in a pacific manner rather than with harsh means. I told him to exercise his own judgment, and if he could disarm them to do it. I kinder wanted to apply heroic measures. That is the truth about it. So he did disarm some of them. Finally, by agreement of some parties, a committee of the supposed mob, of two or three, was turned into the jail, that the mob might be satisfied that Ed Johnson was not there. The statement had been repeatedly made that he was not there, but they were not inclined to credit it. So they were turned in, and made an investigation and satisfied themselves that Ed Johnson was not there. The announcement was made generally, and the mob finally dispersed; but before dispersing they had knocked out all the windows, nearly, of the offices and had thrown in brickbats and used iron telegraph poles in knocking open the outer door to the hall there of the jail—the jail office. I take it it is needless to go more into detail with reference to that mob.

1643 Q. About what time was that; I mean the month and year?

A. I believe this outrage was committed on the 23d of January, 1906, and that a few days elapsed before his arrest; and I think this attempt——

Q. You mean it was a few days after his arrest?

A. A few days after his arrest, yes. I think this attempt to mob him occurred on the night of the day he was arrested. That is my recollection.

Q. Soon after that, as I understand, he was tried?

A. Yes, sir.

Q. He was indicted and tried?

A. Yes, sir.

Q. Of course he was present at the trial?

A. Oh, yes.

Q. I will ask you if there was any attempt at mob violence at the time of the trial, or during the time of the trial?

A. No, none whatever. I want to add, however, that great precaution was taken to prevent any attempt at mobbing.

Q. By Capt. Shipp, the sheriff?

A. Yes, sir; and by the trial judge, and by myself, and everybody that was interested in seeing the prisoner have a trial according to law.

Q. After the trial, and after he was convicted, I will ask you if the excitement or feeling against him continued or subsided—which?

1644 A. It was very much subsided. It seemed to me that after the trial, and after the conviction, the public was satisfied with the result, and seemed altogether pacified.

Q. I will ask you, Mr. Whitaker, whether or not you were very much in touch with the public here with reference to that case, and with the public sentiment with reference to the case?

A. Oh, I think so.

Q. I will ask you if you were not frequently talked to by all classes of people?

A. I was talked to a good deal about it, necessarily.

Q. As you had charge of the prosecution?

A. Yes.

Q. And especially by those interested in having him convicted and punished?

A. Yes.

Q. I will ask you if anything occurred after his conviction that led you to apprehend or believe that Johnson would be mobbed?

A. Not a thing.

Q. At the time Capt. Shipp suggested taking him to Knoxville, what was the state of public feeling?

A. I think it was very much pacified.

Q. Was there anything at that time that caused you to apprehend mob violence?

A. Not a thing.

Q. Was there anything at that time that caused you to apprehend danger to the man on account of his remaining in Hamilton County at the jail?

1645 A. There was not.

Q. When the habeas corpus proceedings were begun in the Federal Court at Knoxville, I will ask you if you attended that trial as a witness?

A. Yes, I was examined as a witness, is my recollection; but I attended to the case professionally also.

Q. Of course, you represented the State?

A. Yes, sir; I represented the State in that proceeding before Judge Clark.

Q. I will ask you if you were present all during the trial?

A. I was.

Q. You went to Knoxville with people who went from Chattanooga, and returned with them?

A. I did.

Q. I will ask you if anything occurred during that trial, or on your way to Knoxville, or on your return from Knoxville, that caused you to apprehend mob violence to this man?

A. Not a thing.

Q. I will ask you if any suggestion of such a thing was made or hinted at in the court room, or any other place, during that trial or during that time?

A. No, sir.

Mr. SANFORD. I object to all evidence as to what this witness' apprehensions were, and what opinion he had about it, or what caused him to apprehend, as incompetent and irrelevant.

1646 Mr. LYNCH. In order that you may understand my object in asking him about it, I will state that he, being the chief police officer of the State, and in touch with the people, would be more apt to know than any one else—even more than the sheriff.

Mr. SANFORD. I desire to note that objection. I do not want to keep making it. Let it be understood that it is made to all testimony as to what aroused his apprehension, or what apprehension he did or did not entertain.

Mr. LYNCH. That objection is made to all that testimony; yes.

The WITNESS. I do not recall a thing. I will state this in that connection, that on our return to Chattanooga from Knoxville, Capt. Shipp was on the same train with the prisoner. He got off the train with the prisoner, and I believe a deputy was with him, somewhere out at Citico, I believe. Anyway it was in the suburbs. Judge McReynolds and myself and some of the other gentlemen we were in company with came on to the depot and got off. When we got to the depot everything was as quiet as it could be. It was on Sunday, and but few people were around the depot. I remember only one, and that is Mr. Charley Baker, a deputy of Capt. Shipp. He was there, and I know I remarked on how quiet everything was, and no feeling or interest in the matter one way or the other seemed to be displayed.

Mr. SANFORD. I object to the witness' statement as to what he remarked as incompetent and as hearsay.

1647 By Mr. LYNCH:

Q. I will ask you whether or not that was true?

A. Yes; that was entirely true.

Q. I will ask you whether any remark was made in the court room, in Judge Clark's presence or to him, by any one, with reference to the mobbing of this negro?

A. Oh, no; not in my presence. I heard no such thing.

Q. I will ask you whether or not you were there?

A. Oh, I was there throughout the whole trial.

Q. After that habeas corpus proceeding, I will ask you if that proceeding, and the appeal from the judgment of Judge Clark, caused any excitement here in Chattanooga?

A. If it did, I saw no evidences of it.

Q. I will ask you if the order of Judge Clark staying the proceeding for ten days in order to enable the defendant to apply for an appeal caused any excitement here.

A. I think not; but I want to state in that connection, Mr. Lynch, that I went from Chattanooga to my home in Winchester immediately after getting here. I say immediately; perhaps that night or the next morning.

Q. When did you return?

A. I was at Winchester several days. I do not remember just how long.

Q. I will ask you whether or not you had returned before the appeal was granted?

A. Yes.

1648 Q. Now I will ask you if you noticed any excitement before you went to Winchester, or after you returned from Winchester?

A. I did not; no.

Q. When the appeal was granted—the first order by Judge Harlan—I will ask you if that caused any excitement?

A. If it did, I did not observe it.

Q. I will ask you, after the Supreme Court granted the appeal, if that caused any excitement or any feeling?

A. If I did, I failed to find it out.

Q. I will ask you if those proceedings, or anything connected with them, or anything connected with the case occurred, that at that time caused you, or would cause in your judgment, a reasonably prudent person, to apprehend mob violence to Ed Johnson?

A. I did not apprehend any mob violence, and I think I am reasonably prudent.

Q. In your judgment was there anything that occurred, that you observed, that should have caused Capt. Shipp, the sheriff, or any other reasonable person to apprehend such mob violence?

Mr. SANFORD. I object to that as calling for the opinion of this witness on a matter as to which expert evidence is not competent. That is not a matter for expert testimony.

The WITNESS. I saw no reason to apprehend mob violence to
1649 this prisoner after he was convicted by the court and jury, from that time on up until he was mobbed; and the night he was mobbed it was a very great surprise and shock to me.

By Mr. LYNCH:

Q. I will ask you if you heard a suggestion of such a thing?

A. No, I did not. I have answered that about a dozen times. Now ask me something else.

Q. I am going to ask you this: If in your judgment the taking of jurisdiction by the federal court was a thing that would be liable to create a feeling or a desire to mob the prisoner, or whether it would add to his security?

A. If I am to express an opinion about that, I will say this——

Mr. SANFORD. I object to the competency of any opinion the witness may give on that question.

Mr. LYNCH. I thing I have proved he is an expert, Mr. Attorney-General.

The WITNESS. On account of the great respect of the people for the Federal Government, I would have thought that the action of the Supreme Court in this case would have guaranteed greater safety to the prisoner. That is my opinion.

By Mr. LYNCH:

Q. I will ask you if you have kept up with the internal affairs and internal disturbances and history of Tennessee for the last few years?

1650 A. Oh, in a reasonable way.

Q. I will ask you whether or not this is true: We have had some mining disturbances, and troubles of that sort, between the labor union and mining corporations in this State, have we not?

A. Yes.

Q. I will ask you whether or not in this district—I do not mean this judicial circuit, but within this mining district and this congressional district—troops have been, within the last two years, called out by the governor to preserve peace and prevent bloodshed?

A. Yes.

Mr. SANFORD. I object to that; first, because it is leading; second, because it is utterly irrelevant; and third, because it is taking up an awful lot of time.

The WITNESS. I sustain the objection.

By Mr. LYNCH:

Q. I will ask you if it is not true that when the federal court at these places granted an injunction against the labor union, restraining them, there was such fear of the Federal Government and such respect for it that the governor felt at liberty, and felt secure enough, to withdraw the troops and did withdraw the troops, after the granting of that injunction?

A. I am not familiar enough with that to testify about it. I do not know.

Q. Now, where were you on the night of the lynching?

1651 A. I was in Chattanooga.

Q. Who were you with?

A. Judge McReynolds.

Q. Where?

A. Judge McReynolds was around at my room that night before the lynching occurred.

Q. I wish you would go ahead now and give a history of the actions of yourself and Judge McReynolds on that night, and try to give the time as you go, from the time you were with Judge McReynolds up to the time the lynching occurred, and what occurred during all that period of time.

A. Some time after supper Judge McReynolds came to my room really on a social call. While he was there I suggested to him that we call on Laps Walker, at the editorial rooms of the Times, saying to him that I had not been around in quite a while. He said he had not, either, and that we would go. This was somewhere in the neighborhood of nine o'clock. We went up Seventh street toward Walnut, and just before we got to Walnut street we noticed, on the opposite side, a bunch of men, some eight or ten or a dozen. They turned and went down Walnut street towards the jail, just before or about the time we turned and went the opposite way on Walnut street towards the Times Building. Judge McReynolds in substance, that he did not quite——

Mr. SANFORD. I object to all statements of conversation between the witness and Judge McReynolds as incompetent and hearsay.

1652 The WITNESS (continuing). That he did not quite understand that, and asked if it was possible that that had any significance in it with reference to Ed Johnson.

Mr. SANFORD. It is understood that the objection is kept up as to all conversations between the witness and Judge McReynolds or other parties.

Mr. LYNCH. Yes. There will be a good deal of that, and we will just treat the objection as made.

The WITNESS. That was the first time my suspicion was in any wise aroused about Ed. Johnson, from the time he had been convicted in the State Court. So we had not gone far on Walnut street until we met, about in front of the Christian Church, Mr. Martin Fleming. We stopped him, and Judge McReynolds and myself told him what we had seen.

Mr. SANFORD. I make the same objection to conversations with Mr. Fleming and other parties they met that evening, not defendants in this case—all conversations this witness had with other parties not defendants. I desire to make the general objection so as to save time. My position is that it is entirely incompetent, irrelevant, and hearsay testimony and res inter alios acta.

The WITNESS. Judge McReynolds requested Mr. Fleming to go up to the jail and see whether or not what we had just seen with reference to those men turning towards the jail had any significance in it, and told him we were going to the editorial rooms of the Times Building, and for him to come back there and let us know

1653 about it. So we went up to the editorial rooms and when we got there we found Mr. Laps Walker and Mr. Frank Spurlock there.

By Mr. LYNCH:

Q. Before you get to that, I do not want you to go so fast——

A. I have got to get home.

Q. Well, you are here now. I want you to tell what Judge McReynolds said to Mr. Fleming as to what he should say to those men with reference to Johnson being a federal prisoner, if anything?

Mr. SANFORD. I make the same objection to the conversation between Judge McReynolds and these parties that I do to this witness' conversation.

Mr. LYNCH. That is understood.

The WITNESS. Judge McReynolds told Mr. Fleming, when he got there, if he found there was any mob gathering there to say to those people that Johnson was a federal prisoner and not to disturb him in any wise; that they would not only get into trouble with the State Court, but with the Federal Government. That is the remark he made there. So when we got to the editorial rooms we told Mr. Spurlock and Mr. Walker what we had seen. I think some one suggested that we had better call up the jail, and we called for the jail and found we could get no connection. That aroused our suspicion, because we were afraid maybe the wires had been cut. I at once called up Capt. Shipp at his residence. He answered the phone, and I asked
1654 him if he knew what was going on at the jail, whether or not there was any trouble there, and he said no, that he had no information whatever, and asked me what was the matter. I told him I did not know, but that he had better get there. Just a moment's lull occurred in the conversation, and I went to tell him something else and found he was not at the phone. So I rang again and some one answered the phone. It was a lady's voice, and I told her that I was not through talking to Capt. Shipp, and she remarked that he had left at once for the jail. Mr. Spurlock suggested that perhaps we had better intercept Capt. Shipp; that if there was any trouble really at the jail he might hurt some one or some one might hurt him. So Mr. Spurlock and Judge McReynolds and myself left. I understood at that time that Capt. Shipp lived on McCallie avenue, and from McCallie avenue to the jail there were two approaches. Some one suggested that he might come one way or the other way, and we divided so as to be certain to intercept him, losing no time in the meantime. So Judge McReynolds and myself went one way and Mr. Spurlock the other, and we missed him. I did not see Mr. Spurlock any more that night. I do not know what became of him. So the judge and I, in order to be certain that we would not miss him, waited several minutes, not knowing that he had passed. Finally we decided he must have gone, and in order to get to a phone we went over to the court-house and went into Judge Walker's office, which fronted the jail. It was a pretty cool night and a strong wind was blowing from the north and we had to keep the windows down;
1655 but we would raise them and look over at the jail to see what we could see. I could not discover anything, and he could not, other than what seemed to us to be the usual outgoings and incomings at that place. The fact, however, that we could not get connection at the jail stimulated our suspicion that something wrong must be going on over there, and he or I, either one, did get central and asked what was the matter with the phone at the jail. She replied "Nothing," and we told her there must be, and finally called up information, and information replied—I was doing the talking; now I remember—

that certainly nothing could be the matter; that she had just been talking to the abstract office, which was close to the jail, and everything was all right there.

Mr. SANFORD. It is understood that my objection is being kept up to the conversations with "central" or "information?"

Mr. LYNCH. Yes, sir.

The WITNESS. So one or the other of us undertook to get hold of Mayor Frierson and found that he was out of the city; and to get hold of the chief of police, and he was out of the city. I remember that I tried to get Mr. Fred Frawley, the chief deputy, at his residence. A gentleman who said he was his brother answered, and said he had just left the house, and that he would see if he could locate him anywhere over the phone.

1656 Mr. SANFORD. I object specifically to the statement of the alleged brother or the supposed brother of Fred Frawley.

Mr. LYNCH. Yes, sir.

The WITNESS. At any rate we made every effort we could over the phone to get hold of somebody for the purpose of having them render any assistance, if anything wrong was going on at the jail.

By Mr. LYNCH. Right there——

A. Wait a minute. We did not succeed in getting anybody.

Q. Do you know Mr. Frawley well?

A. Yes.

Q. I will ask you if you know his voice?

A. Yes.

Q. And it was not Mr. Frawley who answered the phone?

A. No.

Q. He has several brothers, has he not?

A. Oh, yes. So while we were there Mr. Waters, the janitor for the court-house, and Mr. Will Allen, who was at that time a constable, came up into the court room into Judge Walker's office where we were, and we told them our apprehension, and what we were trying to do, and asked them to go over there and see if there was really anything the matter. So after some hesitation on the part of Mr. Allen, he and Mr. Walters, at Judge McReynold's direction, went to the jail, we telling them to come back to report to us just the circumstances over there. They never came back. In the meantime, after they left, Judge McReynolds phoned to the deputy clerk, Mr.

1657 James Pemberton, and he came up there and we told him what we were apprehensive of. He went at once to the jail and in a few minutes returned, saying they would have him out in a minute. About that time I heard a shout and I raised the window and saw a considerable crowd coming out in a very excited manner; but I was not able, at the distance I was, to locate Johnson, the prisoner, or to recognize him. I supposed, of course, from their actions, though, that they had him. Mr. Pemberton discovered that, and said he was going to the bridge, and Judge McReynolds told him not to go to the bridge. Anyhow he went on off, and the Judge and I went over to

the jail then. When we got there, there was Capt. Shipp and Mr. Brown, the night jailer there.

Q. I will ask you whether or not you said to Mr. Pemberton when he started over there, to go over and see Capt. Shipp personally, and find out if there was any assistance that you and Judge McReynolds could render him, or any assistance that could be rendered, and to come back?

A. Yes.

Mr. SANFORD. I object to the question as directly leading, and to the subject-matter as incompetent, hearsay, and irrelevant.

The WITNESS. I told him that.

By Mr. LYNCH:

Q. You spoke of Mr. Brown, the night jailer. I will ask you whether or not it was Mr. Gibson, the night jailer?

A. I did not know I said Brown. It was Gibson I saw. I
1658 remember when we got over there Capt. Shipp had a gun in his hand, and Mr. Gibson was so excited that the perspiration was rolling off of him in great beads.

Q. I will ask you whether or not Capt. Shipp was excited?

A. Yes, he was excited. I was sorter of excited myself when I saw what had happened.

Q. I will ask you whether or not, Mr. Whitaker, you made Capt. Shipp acquainted with the efforts you had made to arouse the city?

A. Yes.

Q. And the failure you had met?

A. Yes. I do not, however, accept the suggestion "to arouse the city." We simply tried to arouse such officers of the city as we thought could give the most assistance, if assistance was needed.

Q. I will ask you whether or not you tried to reach Mr. Wilcox, the chairman of the police board?

Mr. SANFORD. I note an objection to all conversations with Capt. Shipp, to him or by him, as irrelevant, hearsay, and incompetent.

The WITNESS. In phoning to some of the parties whom I have named, we learned, my recollection is, that Mr. Wilcox was at home with a very sick wife. I do not think we ever got in connection with him, and that we ceased trying to do that after we got that information. That is my recollection about that. I am not altogether clear about that, however, on that point.

1659 By Mr. LYNCH:

Q. I will ask you whether or not you got that information from the editor of the Times, Mr. Walker?

A. I do not recall where we got it.

Q. I will ask you, when you and Judge McReynolds reached Capt. Shipp, after the mob had passed away, if there was anything there that could have been done by Capt. Shipp to have prevented the lynching at that time, that you saw?

Mr. SANFORD. I object to that question as leading, and as calling for incompetent and irrelevant testimony, and I object to the answer.

The WITNESS. Any answer I could make to that would only be an opinion, but a very pronounced one, that it would have been idle and silly to try to intercept that mob under the conditions that then prevailed.

Mr. SANFORD. I object to the testimony as to the witness' opinion, as incompetent.

By Mr. LYNCH:

Q. I will ask you whether or not the state criminal court, of which you are attorney-general, has attempted to investigate and indict those lynchers since that time?

A. Oh, yes. Judge McReynolds gave the grand jury——

Mr. SANFORD. I object to that as entirely incompetent.

The WITNESS (continuing). A special charge with reference to it, and directed their attention in very strong language toward
1660 the violation of the law in that respect; and I many, many witnesses summoned before the grand jury to investigate it; and I violated my usual way of doing business by going before the grand jury and directing them, if they could find any evidence that would connect any parties with that lynching, that would in anywise justify the return of an indictment, that I wanted one returned.

By Mr. LYNCH:

Q. I will ask you if the investigating officers for the Government—I mean by that the detectives, or inspectors—laid before you any of the evidence they had gathered up or gave you any assistance whatever in investigating that matter before your grand jury?

Mr. SANFORD. I object to that as entirely incompetent.

The WITNESS. None whatever. I do not know any of those gentlemen, and never did meet them. I forgot to make one statement there that I desire to make, with reference to Mr. Martin Fleming. He came back from the jail to the editorial rooms of the Times Building and reported that there was only a lot of boys around there, and that he anticipated no trouble to be going on, but said he would go back, and Judge McReynolds told him to go back. The idea was, if the thing became ominous, to let him know.

Mr. SANFORD. The same objection is maintained.

The WITNESS. And Mr. Fleming never returned any more.

By Mr. LYNCH:

Q. Do you know Capt. Shipp, the sheriff?

A. Yes, sir.

1661 Q. How long have you known him?

A. Oh, I have known Capt. Shipp for many years—fifteen or twenty years.

Q. Do you think you know his general character in this community?

A. I know I do.

Q. Is that general character good or bad?

A. It is just as good as any man's can be.

Q. What is his character for peace and good order?

A. It is perfect.

Mr. SANFORD. I object to testimony as to peace and good order. Can it not be agreed by counsel for the defense that there is a general objection to all testimony as to the character of any of the defendants for peace and good order and matters of that sort outside of their general reputation?

Mr. LYNCH. Yes, sir.

Mr. SANFORD. It is taking an awful lot of time to keep making objections.

Mr. LYNCH. We are perfectly willing to treat the objection as made.

Mr. SANFORD. It is understood, then, that a general objection may be reserved to all testimony of that kind?

Mr. LYNCH. Yes, sir.

By Mr. LYNCH:

Q. I will ask you if, with Capt. Shipp's general character, you would give him full faith and credit on his oath?

A. I would. Capt. Shipp is a kind-hearted, gentle,

1662 gentleman.

Q. I will ask you if you know Joe Clark, a defendant here?

A. I do.

Q. How long have you known him?

A. All his life, or ever since he was a boy.

Q. I will ask you if you live now, and have lived for years, in Franklin County, where he was raised?

A. Yes.

Q. I will ask you whether you knew him there in Franklin County?

A. I knew him only as a little boy there.

Q. You knew his family?

A. Yes; I know them all.

Q. I will ask you if you have known him in the last 12 years, since you have been here in Hamilton County?

A. Yes.

Q. You think you know his general character?

A. I know I do.

Q. Is it good or bad?

A. It is as good as anybody's.

Q. I will ask you if you know his character for peace and good order?

A. I do.

Q. Is it good or bad?

A. It is just as good as it can be.

Q. I will ask you if, from his general character, you would give him full faith and credit on his oath?

A. I would, absolutely.

1663 Q. Do you know Matt Galloway, the defendant?

A. I do.

Q. How long have you known him?

A. I have only known Mr. Galloway since he had been connected with the office of the sheriff for this county, except in a casual way theretofore.

Q. I will ask you whether or not, since he has been connected with the office of the sheriff, you have been thrown with him a great deal in an official way.

A. A good deal, necessarily.

Q. I will ask you if you think you know his general character?

A. I do.

Q. Do you know his character for peace and good order?

A. Yes.

Q. What about that?

A. It is good.

Q. What about his general character?

A. It is good.

Q. From his general character would you give him full faith and credit on his oath?

A. I would.

Q. Do you know Captain Brown, the jailer?

A. Yes, I know Captain Brown.

Q. Do you think you know his general reputation?

A. Yes, I know it.

Q. Is it good or bad?

A. It is good.

Q. Would you believe him on his oath?

1664 A. Yes, entirely.

Q. Do you know Jerry Gibson, the night jailer?

A. Yes.

Q. Do you know his general reputation?

A. Yes.

Q. Is that good or bad?

A. Good.

Q. Would you believe him on his oath?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. You say the government representatives, the detectives, have never furnished you any information. And you have never furnished them any either, I suppose?

A. I did not have any opportunity to, General. I did not know them. I never saw them in my life. I would have been glad to furnish them anything I knew.

Q. Did Judge McReynolds hand you a copy of the telegram he received from Judge Harlan, notifying him of the appeal?

A. He showed me the telegram itself.

Q. He showed you the telegram?

A. Yes, sir.

Q. What time did he show it to you?

A. I can not recall, but I am impressed with the idea that he showed me that telegram just before or just after noon. I know

1665 he was on the bench and called me up there and show it to me.

Q. What day was that?

A. I think that was on the day that the prisoner Johnson was lynched that night. That is my impression.

Q. What time was it in your judgment that you left the Times office that night, to go up to the court-house?

A. I do not think I could have spent more than fifteen or twenty or twenty-five minutes at the Times office.

Q. Then what time would that have brought it to?

A. That would have brought it, in my judgment, close to half past nine, because I think we left somewhere in the neighborhood of nine o'clock to go around there.

Q. What time did the lynchers leave the jail with Ed. Johnson?

A. I can not be accurate about that. I took no note of the time. I have to guess at every bit of it. I will give you my best impression about that. I think we must have been over at the court-house half an hour or an hour.

Q. Half an hour or an hour?

A. Yes.

Q. And it is impossible for you to fix it accurately, I suppose?

A. Entirely so.

Q. What room were you in?

A. Judge Walker's room.

Q. What floor is that on?

1666 A. His court-room floor, the second story of the building.

Q. It faces the jail?

A. Yes, sir.

Q. How far away from the jail?

A. Across the street.

Q. How far from the street line is it?

A. I expect it is between fifty and seventy-five feet, or maybe more.

Q. And then the street intervenes?

A. Yes.

Q. It is a comparatively narrow street; it is not a very wide street?

A. No.

Q. And then the jail sets back 20 or 25 feet from the sidewalk?

A. Yes; I expect twenty-five or thirty feet.

Q. So you were, altogether, say some one hundred and twenty-five or one hundred and fifty feet from the jail?

A. I think it is further than that. I think the street is wider than you figure. I would say one hundred and fifty feet to two hundred feet.

Q. The street is about a forty-foot street?

A. I expect so. It looks about that way to me.

Q. You were there, you think, from half to three-quarters of an hour?

A. Yes; maybe longer.

Q. From half an hour to an hour, you said?

1667 A. Yes.

Q. And maybe longer than an hour?

A. I don't think it was longer than an hour, but I am approximating that entirely. I do not recall taking any note of the time.

Q. Did either you or Judge McReynolds go to the jail?

A. No, sir.

Q. Did either you or Judge McReynolds make any effort to ring the alarm bell in the court-house?

A. No; and I do not know whether there is an alarm bell there or not.

Q. Was it not rung during the time of the first excitement?

A. I do not recall it. There may be one there. It never occurred to me.

Q. There is a court-house bell, is there not?

A. I do not know whether there is a court-house bell or not, General. There is a court-house clock. I do not remember my ever asking if there was a court-house bell.

Q. You do not know?

A. I do not know.

Q. You do not know of any effort being made to ring the alarm bell that night, and you do not know that there is a bell, even?

A. No.

Q. You say neither of you went over to the jail?

A. No, sir.

1668 Q. When you telephoned to police headquarters you found the chief of police out of town?

A. Yes, sir; that is my recollection.

Q. But somebody else was in charge?

A. Yes, somebody must have been. I have some faint recollection about trying to get Capt. Cass on some information that perhaps he was in charge. I could not reach him.

Q. There was a sergeant or somebody in charge there at police headquarters?

A. Necessarily, General, I suppose.

Q. Did you go over and get the sergeant to send a detail of police to the jail?

A. No, sir.

Q. Did you or Judge McReynolds go down to the police station and endeavor to get any police?

A. No, sir.

Q. How far were you from the police office?

A. I don't know; I suppose it is five or six blocks.

Q. Five or six blocks?

A. It may not be that far.

Q. Was it not a little bit less than that? I do not know and am asking for information.

A. I do not believe it is over four blocks, if it is that far.

Q. Did you send anybody down to police headquarters?

A. I did not.

Q. When the lynchers came out with Ed. Johnson, it was a
1669 sort of handful of men, was it not, General? There were not very many in the lynching party, were there?

A. There were not very many, if I have got the crowd properly divided in my mind, but all in all, I expect there were fifty or sixty men. Some, however, as is usual on such occasions, seemed to be in front.

Q. In front with Johnson?

A. I would say there was a bunch of ten or twelve men.

Q. That had him in their immediate charge?

A. It seemed so to me. I did not count the men. They were going hurriedly. Right behind the first bunch of men was a larger bunch, a considerable crowd.

Q. That was more in the nature of bystanders and spectators?

A. I don't know about that. That is the way they impressed me, though.

Q. Did they have any guns? Did you see any guns?

A. I do not suppose I saw a single gun.

Q. Did you see any gun in either crowd?

A. No.

Q. Did you see any pistols in either crowd?

A. No, sir.

Q. Did either you or Judge McReynolds make any effort to stop them when they came out?

A. No, sir.

Q. Judge McReynolds had made a speech, as I understand, on the first occasion?

A. At the first mob; yes.

1670 Q. Did he make any speech at this time?

A. No, sir; he did not have time to if he had been so inclined.

Q. Did either of you make any effort to go after the men?

A. No, sir. I do not think you understand our situation. We were upstairs, and by the time we got downstairs and got over to the jail those people had entirely disappeared.

Q. There is a hill there?

A. Yes, sir.

Q. And they would get out of sight in half a block?

A. No.

Q. The hill begins at the corner?

A. The hill begins at the corner of the block on which the jail is situated, and goes up one block, and then turns off.

Q. So that after they had gone one block they would be out of sight?

A. They would have to go further than a block—about a block and a half.

Q. About a block and a half from the jail door?

A. That is my recollection.

Q. Did either of you follow after them?

A. No, sir; we went immediately to the jail, to ascertain what had happened.

Q. Did Sheriff Shipp follow after them?

1671 A. No, sir.

Q. Did Jailor Gibson follow after them?

A. No, sir.

Q. During this indefinite time that you were there, how many people had there been standing outside the jail, would you say?

A. I can not estimate that. I did not see anybody that I know standing outside of the jail. They seemed to be going in and coming out; but there was a frost over the window, on account of the coldness of the night. I rubbed that off and looked through, and then would raise the window and look over until I would get uncomfortably cold; and hence I could not see everything that went on.

Q. There was a high stone fence in front of the court-house yard was there not?

A. Yes.

Q. Five or six feet high?

A. Yes; but the yard of the court-house is on a level with the fence on the inside. It is five or six feet above the street.

Q. Do you remember seeing a number of men standing along by that wall during this time?

A. No; I did not see that.

Q. You do not remember that?

A. No, sir; I did not see that.

Q. It seemed to you like the people were going in and coming out of the jail all the time?

1672 A. Now and then. When I would look I would generally see some one. I do not know that I did every time.

Q. How often would you look?

A. I looked pretty often. I could not estimate that.

Q. Did either you or the judge go down there and ask those people who were coming there what was going on inside?

A. No, sir.

Q. Was it between nine and ten o'clock at night, or along about that time?

A. Yes; along somewhere at that hour.

Q. It was an unusual thing for that many people to be going in and out of the jail at that time—between nine and ten o'clock.

A. I do not know whether it was or not. I am never around the jail much at night. I never go there except on official business.

Q. It was unusual enough to keep you there from half an hour to an hour to see what was going on?

A. That, and the fact that we could get no connection there, and that we had seen a crowd of men go down there; everything put together made us apprehensive.

Q. Did those men you first saw out of that crowd have anything over their faces?

A. Not when I saw them. If they did, I did not discover it.

Q. They did not have handkerchiefs or anything over their faces?

A. If they had I did not discover it.

Q. That was near Seventh and Walnut streets?

1673 A. When we saw them they were standing right on the corner of Seventh and Walnut.

Q. That was about half a block or three quarters of a block from the jail?

A. About half a block away from the jail, I think. The jail is about in the middle of the block.

Q. When you passed up, they went towards the jail, as I understand you?

A. Yes, sir.

Q. Johnson was tried right quickly, was he not, after he was arrested?

A. Well, yes, according to the way some courts try people.

Q. He was tried quickly according to the way your court tries them, was he not?

A. We have tried others just as quickly.

Q. He was arrested on what day; do you remember?

A. No, sir; I do not remember, General, what date it was.

Q. Refreshing your recollection, was the offense committed on Tuesday, January 23d?

A. Yes; I do not remember the day of the week, but I do remember it was the 23d of January.

Q. And was he arrested on the 24th, the next day?

A. I do not think he was. He may have been, but I am impressed with the idea that perhaps two or three days elapsed.

1674 Q. Was he not arrested on Thursday, the 25th, two days afterwards?

A. He may have been. I am impressed with the idea that two or three days elapsed after the offense was committed, before the arrest.

Q. And he was taken away by the sheriff to Nashville?

A. Yes.

Q. He went by way of Harriman?

A. That is my information.

Q. And Judge McReynolds made the order on account of the fact that it was not safe for him to stay in the Hamilton County jail?

A. I think that order was made.

Q. There was tremendous excitement, and there was an exceedingly violent mob that same night?

A. It was a violent mob, but not exceedingly so. It was finally controlled.

Q. You were there. Did you make a speech that night?

A. No, sir.

Q. Judge McReynolds made a speech?

A. He tried to, but he did not succeed very well. There was too much noise.

Q. And a committee was appointed to go through the jail?

A. That is my information, that some of them agreed to let a committee go through the jail to ascertain the fact as to whether or not Johnson was there.

1675 Q. Were they representatives of the mob, as you understood it?

A. I do not know whether they were or not. I did not understand that. I know this about that: When I heard it I said I did not believe in any such stuff as that. I did not believe in surrendering any points; that I believed in dispersing that mob.

Q. Was not Johnson kept in Nashville until he was brought back for trial?

A. That is my recollection.

Q. He was put on trial what date? Tuesday, the 6th of February—that is right, is it not?

A. I believe it was. I may be mistaken about that.

Q. In the meantime there had been a special session of the grand jury held in order that he might be indicted?

A. That is right.

Q. He was indicted on Saturday, the 27th, two days after he was arrested, was he not?

A. I do not remember, but I know the grand jury was called together at once and he was indicted at once?

Q. And then he was taken to Nashville and brought back from Nashville the day before he was tried?

A. I think so.

Q. He was brought back by the sheriff from Nashville?

A. Yes.

Q. There was no appeal taken in his case, was there?

1676 A. No. I want to state this in that connection, if it is permissible——

Q. I do not know what you are going to say. If counsel wants to ask you any other question, that is another matter. I ask you the one question, whether any appeal was taken?

A. No appeal was taken.

Q. Is it not a fact that a published statement was made by counsel for the defendant, who had it in charge, as to the reason why no appeal was taken, and was that not published in the papers?

A. I do not remember what they stated about that. I do not remember seeing that statement.

Q. Do you remember a publication that was made in the Chattanooga Times the day after it was decided that no appeal should be taken—a signed statement by Mr. Thomas?

A. I have a faint recollection about that, since you suggest it, but I do not remember the tenor of that statement.

Q. The original counsel was Mr. Cameron, appointed by the court?

A. Yes.

Q. And he appointed Judge Shepherd and Mr. Thomas also?

A. Yes.

Q. Mr. Thomas took a very active interest in the case? And felt the responsibility of it?

1677 A. He had really a feverish anxiety about it.

Q. After Ed. Johnson had been convicted, at Mr. Thomas' request, the court appointed three other lawyers to confer with them as advisors?

A. Yes; I was going to state that a moment ago.

Q. The court appointed Mr. Cantrell, Mr. Pritchard, a counsel in this case——

A. And Mr. Foster Brown.

Q. Is it not a fact that after they had decided not to appeal they published a statement in the papers the next day over Mr. Thomas' signature, and did not Mr. Thomas publish it?

A. I remember a communication by Mr. Thomas over his signature, but I do not remember the publication of that.

Q. Do you not remember, refreshing your recollection, that this was published in the paper next day, referring to the conference that had been held between these six attorneys—they are leading members of the bar here; those six gentlemen are representative, high-class attorneys?

A. Yes; they are high-class lawyers and gentlemen.

Q. There is no question about that.

A. No.

Q. Referring to their conference, did not Mr. Thomas use this language:

"We discussed the recent mob uprising and state of unrest in the community. It was the judgment of all present that the life of the defendant, even if the wrong man, could not be saved; that an

1678 appeal would so inflame the public that the jail would be attacked and perhaps the prisoner executed by violence. In the opinion of all of us a case was presented where the defendant, now that he had been convicted by a jury, must die by the judgment of the law, or else, if his case were appealed, he would die by the act of an uprising of the people."

Mr. LYNCH. We want to object to that because, in the first place, the original document would be the best evidence, and, in the next place, the whole article should be introduced and not merely parts of it or an excerpt from it; and, third, because it is merely the opinion of one man or set of men.

The WITNESS. Since you read me that, I believe I remember it.

By Mr. SANFORD:

Q. That is not all of it, but you remember that?

A. I believe I remember that part, since you read that to me; but I want to make this statement—that one of those six gentlemen, I forget definitely who——

Q. I do not ask you for anything else.

A. I do not care to make the statement, then. I supposed you wanted the full facts with reference to why there was no appeal taken and why they declined it.

Q. No; I just asked you if that was published in the paper.
A. Yes.
Q. And if you recall that?
1679 A. I think I recall that, in substance, as you read it to me.
Q. What was done with Johnson after he was convicted? Do you remember where Sheriff Shipp took him?
A. My recollection is he took him to Knoxville.
Q. Do you remember how long he kept him there?
A. No; I do not. It occurs to me, though, that he kept him there until—no; I was going to say until the case was heard on the writ of habeas corpus by Judge Clark, but I am incorrect about that, because I remember, I think very distinctly, that as we all went to Knoxville together Capt. Shipp carried the prisoner. Did he not? Judge Shepherd says I am wrong about that.
Q. Have you any distinct recollection about that?
A. No; I say I have not, except that I have a recollection and do know that Capt. Shipp brought Johnson back with him.
Q. After that was over?
A. Yes.
Q. What day of the week was it he brought him back, if you recall?
A. I do not think I am mistaken in saying it was Sunday. That is my recollection.
Q. The Sunday before the lynching?
A. It was necessarily before the lynching, and I reckon it was the Sunday before.
Q. Was it the Sunday immediately before the lynching? He was lynched Monday night, was he not?
1680 A. I do not even remember the day of the week: but some little time elapsed from the time he brought him back from Knoxville until he was lynched.
Q. Was it more than a day? Was it several days?
A. Yes, it was several days. I know that.
Q. Judge Clark had declined to grant the writ of habeas corpus, had he not?
A. Yes.
A. And the governor granted a reprieve of a few days?
A. Yes.
Q. He granted a reprieve from the 13th to the 20th, did he not?
A. Yes; Judge Clark granted what he called, I believe, a stay order for ten days; and the sheriff had that in one hand, and he had the order of the state court in the other hand to execute him before the expiration of that ten days, and in order that no complication might occur, after a conference between Judge McReynolds and Judge Clark and at Judge McReynolds' request to the governor of the State, he was reprieved until the expiration of the ten days, so that no conflict might occur between the two courts.
Q. Is it not a fact that the general expectation was that nothing would come of that appeal and that Ed Johnson would be executed on the 20th?

A. I do not know whether that was general or not. I know I was wonderfully surprised that anything did come of it.

1681 Q. Was it not so expressed in the public press repeatedly?

A. It might have been.

Q. Was it not the general expression here in the public press that there would be nothing further to prevent his execution on the 20th? It was the general expectation that he was going to be hung on the 20th?

A. I think you are right. That was my expectation.

Q. And the community generally believed that?

A. I think so.

Q. And the first intimation that he would not be hung on the 20th was when the news came Monday morning, was it not?

A. I do not remember the day of the week. It was when the news came that the Supreme Court had taken jurisdiction of the case.

Q. That was the day of the lynching, was it not?

A. That is my recollection, that we got that information that day by telegram, and that night he was executed.

Q. What were you doing that day?

A. I was in court here.

Q. What case were you trying?

A. I do not remember. I know the criminal court was in session.

Q. You were busy in court all day?

A. Yes, sir. I had not circulated any among people except what I got from the usual trial of the docket.

1682 Q. Do you know whether the jail was heavily guarded during the trial of Johnson, at night?

A. The jail?

Q. Yes.

A. No, I do not; but I know the court-house was heavily guarded during the day, and I suppose the jail was at night.

Q. I mean of your own personal knowledge?

A. I have no personal knowledge.

Q. You do not know about the habit of guarding the jail. You were not there customarily, and do not know the habit?

A. No; I have been at the jail very few times at night, for any reason.

Redirect examination by Mr. LYNCH:

Q. You were asked about the court calling the grand jury in extra session to indict this negro Johnson for rape. I will ask you if, at the same time, he did not charge the grand jury with reference to that assault at the jail?

A. Yes.

Q. And delivered a vigorous charge on that subject?

A. Yes.

Q. You were asked about the opinions of these attorneys for Johnson, and their reasons for not appealing. I wish you would tell all you know about that.

1683 Mr. SANFORD. I object to any statement that was not made public.

By Mr. LYNCH:

Q. I want all you know about their reasons for not appealing.

A. Mr. Cameron and Judge Shepherd and Mr. Thomas were the defending counsel, and Mr. Thomas seemed to be very much distressed as to what was his real duty in the premises, and requested Judge McReynolds to appoint what he called an advisory board of lawyers on the proposition as to whether or not it was their professional duty to take an appeal; and in obedience to the request of Mr. Thomas—I do not remember whether or not Judge Shepherd joined in the request, but I know Mr. Thomas made it—he appointed, as stated, Mr. Robert Pritchard, Mr. John Cantrell, and Mr. Foster Brown. Of course I was not present at their consultations, but one or more of them told me, and I think I am right when I say I am at least certain that Mr. Foster Brown told me that they went over the case very fully with the trial lawyers, and after doing so they all fully agreed that no error had been committed in the trial and that the proof established the guilt of the defendant; and that they did not feel it was their duty to take an appeal under those conditions.

Q. I will ask you—you speak of Mr. Brown—whether he was or not a very eminent lawyer here?

A. Yes, sir.

1684 Mr. SANFORD. I object to any statement of a private conversation which Judge Brown may have had with the witness or did have with the witness.

By Mr. LYNCH:

Q. I will ask you whether or not Mr. Brown was a former Congressman from this district, and former district attorney-general?

A. Yes, sir.

Q. And I will ask you whether or not these other gentlemen were leading lawyers?

A. All leading lawyers and splendid gentlemen. That covers the ground.

Q. I will ask you if these men did not represent every shade of political opinion?

A. Well, let me see. Yes; there were Democrats and Republicans both.

Mr. SANFORD. I object to that as entirely incompetent. There is no politics in this.

By Mr. LYNCH:

Q. And mugwump?

A. Yes; a mugwump, and, I think, a Prohibitionist.

Mr. SANFORD. You will be back the latter part of the week? I may want to cross-examine you further.

The WITNESS. I can come at your request. If you want to cross-examine me further, notify me and I will come.

By Mr. LYNCH:

Q. I will ask you, refreshing your recollection, if at or about
1685 the time Johnson was arrested, there was another negro, named Wyatt, who was arrested on suspicion for the same offense, and taken by Capt. Shipp to Nashville with Johnson?

A. That is right. I had forgotten that.

Recross-examination by Mr. SANFORD:

Q. Is it part of Mr. Galloway's reputation that he got into some trouble here last week at the grocers' picnic? Have you heard about that?

A. Yes, sir; I heard about that—over at South Pittsburg.

Redirect examination by Mr. LYNCH:

Q. I will ask you whether or not it is part of his reputation with reference to that affair that he got into a row over there in arresting a drunken man?

A. Yes; that is what I heard; that it was part of his reputation that he got into trouble over there trying to maintain peace and order.

Recross-examination by Mr. SANFORD:

Q. Was his row with a man or a woman?

A. I heard it was with a man, and that he struck at the man and hit him a glancing lick and struck a woman.

1686 Q. Is that in his county?

A. No, sir.

Mr. SANFORD. It was out of his jurisdiction.

By Mr. LYNCH:

Q. I will ask you whether or not he was assisting an officer over there?

A. That is my information, that the officers over there had more than they could handle.

Q. And they called on him to help them?

A. Yes.

Q. He is about as good a man as they could call on?

A. Oh, well—I am much obliged to you, gentlemen.

Rev. IRA M. BOSWELL, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. COOKE:

Q. What is your name?

A. Ira M. Boswell.

Q. What is your occupation or calling?

A. I am a minister of the gospel.

Q. Of what church are you pastor?

A. The Walnut Street Christian Church.

Q. Of Chattanooga?

A. Of Chattanooga.

1687 Q. How long have you filled the pastorate of that church?

A. Very nearly four years. It will be four years the first of October.

Q. Are you a member of the Pastors' Union of Chattanooga?

A. Yes, sir.

Q. State what sort of an organization that is.

A. It is an organization of the Evangelical preachers of the city, for the purpose of discussing and association.

Q. Has that pastors' union a committee called "The Law and Order Committee?"

A. It has.

Q. What are the duties of that committee?

A. The duty of that committee is to investigate any violation of law, or any supposed violation of law, to look after the welfare of the city, and to bring before the association any matters that need to be investigated.

Q. Does that committee do that sort of work, and when any threatened violation of law comes to their notice, does that law and order committee call the attention of the authorities to that danger?

A. The law and order committee calls attention to it, but each preacher is supposed to keep his eyes open and to keep his ears open and to report, and when those matters are brought up before the association, they are placed in the hands of the law and order com-

1688 mittee for investigation, to report again to the association, or take action if they see fit.

Q. How often does that pastors' union meet?

A. It meets every Monday morning until the first of June, and then once a month.

Q. How long have you been a member of that organization?

A. Since the first Monday, I believe, I was in the city.

Q. Some four years ago?

A. Yes.

Q. Do you belong to any other league?

A. I am a fraternal delegate from the pastors' association to the central labor league, I believe it is. The central labor league is a body composed of delegates from every labor organization in the city.

Q. As a pastor, you cooperate with them, in your capacity as fraternal delegate from your pastors' association?

A. Yes, sir; as frequently as possible I meet with them.

Q. I will ask you if by reason of your associations and duties, and your membership in those organizations, you do not come in contact with large numbers of citizens of this community, and with the public generally—in daily contact?

A. I think so; yes, sir. I preach also on an average of about twice a week in the shops.

1689 Q. What shops?

A. Loomis & Hart's.

Q. Is that a big lumber company?

A. A very large lumber mill and furniture factory. The Chattanooga Furniture Factory; the United States Pipe Works——

Q. That is a large factory, the United States Pipe Works?

A. Very large; the Chattanooga Roofing & Foundry Company.

Q. Another large factory in Chattanooga?

A. One of the largest in the city, and the Wheland Manufacturing Company.

Q. Another large plant?

A. One of the largest.

Q. Do you remember the trial of Ed Johnson on the charge of rape, in the circuit court of this county?

A. I do.

Q. Do you remember the incident which was the cause of his trial; that is, the actual occurrence?

A. I do; yes, sir.

Q. Do you remember his arrest?

A. I have a recollection of that; yes, sir.

Q. Do you remember the arrest of a man named Wyatt, also charged with the commission of the same crime?

A. I remember the arrest of some other man, but the name has slipped my mind.

1690 Q. Do you know anything about the state of public feeling at the time of the arrest of these two men, Johnson and Wyatt?

A. I think I do; yes, sir.

Q. The public feeling was rather high at that time, was it?

A. Intense.

Q. The public was rather incensed against the ones supposed to be guilty?

A. The feeling was very intense.

Q. What steps did Sheriff Shipp take, if any, to protect these men?

A. I could only tell that from what I saw in the paper.

Q. We are not asking for that. Did you attend the trial of Ed Johnson, as a spectator?

A. Yes, sir. The only portion of the trial I missed was the testimony of the young lady, and when the jury, I think, returned its verdict.

Q. That trial consumed several days, did it not?

A. Several days.

Q. You were in almost constant attendance at that trial?

A. I was there morning and afternoon.

Q. Do you remember the date of that trial?

A. The exact date I do not; no, sir.

1691 Q. It was in the first part of February, 1906, was it not?

A. Yes, sir; I remember it was along the first of February.

Q. After the twelfth of February, state whether or not the public sentiment against him, which tended towards violence, did not subside.

A. I think I could say that the public sentiment subsided with the beginning of the trial from my point of view. I was present, and the only thing I saw during that trial that appeared to be anything in the way of excitement was the congregation of colored people in front of my church, just about half a block away. I saw very few black people around the court-house, but in passing from the court-house as soon as the trial was over, to get my mail at the church, I frequently had to pass through them; but there was no fighting. They seemed to be standing around and looking over. I did not see any excitement.

Q. Did you in all your rounds, after that trial was over, hear any talk that would cause you to apprehend that there might be any attempt to lynch this prisoner?

A. I did not.

Q. Do you remember the first assault upon the jail, when a large mob assaulted the jail, and were only repulsed after they were satisfied Johnson had been removed?

A. I do.

Q. I will ask you to state whether or not you preached a sermon on the subject of lynching after that happened?

1692 A. Yes, sir.

Mr. SANFORD. I object to that.

By Mr. COOKE:

Q. What position did you take in the sermon you preached?

A. I preached a very——

Mr. SANFORD. I object to that as entirely incompetent.

By Mr. COOKE:

Q. What position did you take in that sermon?

A. I took the position that it was a violation of good citizenship. I did not mince my words at all in the matter. I called attention in as strong a way as possible for me to do so to the lack of good citizenship in any man or men trying to take the law into his own hands.

Q. Now, Doctor, your pastors' league had a meeting the morning of this lynching, did it not?

A. Yes, sir.

Q. Did the law and order committee make a report?

A. It did not.

Mr. SANFORD. I object to the question as to whether or not the law and order committee made a report.

By Mr. COOKE:

Q. I will ask you whether there was anything that would arouse apprehension on your part or on the part of any prudent man that any lynching was threatened on that occasion?

1693 Mr. SANFORD. I object to any statement of the witness as to what his own apprehension was, and to his opinion as to a reasonably prudent man's apprehension.

The WITNESS. Ask the question again.

At the request of counsel the stenographer read the question as follows:

"I will ask you whether there was anything that would arouse apprehension on your part or on the part of any prudent man that any lynching was threatened on that occasion?"

The WITNESS. I will answer that by saying that I never dreamed there was anything like a lynching that would take place. No one else mentioned it. There was not any reference made to Ed Johnson, or to the trial, in any way whatsoever.

By Mr. COOKE:

Q. You had read the Chattanooga Times that morning, had you not?

A. I read it every morning. I can not say positively that I read it that morning.

Q. You had also read the afternoon papers containing an account of the appeal granted by the Supreme Court?

A. Yes, sir; I know those appeals had been granted. I read the papers.

Q. What is your experience, as a man who is a member of these leagues and this pastors' union, a man who comes in contact
1694 with the public generally of this community, as to the respect with which decrees or orders of Federal courts are held in this county?

Mr. SANFORD. I object to that as entirely incompetent.

The WITNESS. I think they are held in a great deal more respect than the county or State courts.

By Mr. COOKE:

Q. I will ask you if it is not a fact that decisions of the Federal court are more highly respected and more greatly feared than those of the State court?

A. That is my observation.

Q. State whether or not it is your observation that men will take more chance of incurring the displeasure of the State court, but that they have never been known to take liberties with a decision or order of the Federal court in this community?

A. I can not say it has never been known. I can say that I never heard of it, and I have found in my experience that men do not care to fool with the Federal court.

Q. Is it not the general impression amongst the public that no sort of friendship or pull may avail a man when he is charged before the Federal court?

A. That is the general impression, as I find it. I might explain, if I am permitted to——

Q. Certainly; make your explanation.

A. That I have had some little experience along this line,
1695 because from my entrance into Chattanooga I have had to fight "blind tigers," and I have always found they had more respect for the Federal court than they had for the other courts, perhaps, and

if I could only get them stirred up on that line they were not as apt to violate the law; and in investigating that matter I was impressed with the fear that they in general have of the Federal court, because they say that the Federal court will have no misplay, and generally they are people that are away, and they do not know them, and they are virtually strangers. That has been the observation that has come to me.

Q. Are you acquainted with Sheriff Shipp, the defendant here?

A. I am.

Q. How long have you known him, Doctor?

A. It seems to me I have known him ever since I came to Chattanooga.

Q. Are you acquainted with his general character and standing in this county?

A. I am.

Q. Is it good or bad?

A. Good.

Q. From that character would you give him full faith and credit on his oath in a court of justice?

A. I would.

Cross-examination by Mr. SANFORD:

1696 Q. Prisoners in Federal courts are usually in the custody of United States marshals, are they not? They are arrested by United States marshals as a rule?

A. As a rule, I suppose that is the case.

Q. Would you say that the people have more fear and respect, to use the phrase that has been used, for United States marshals than they have for state sheriffs; or how about that?

A. No, sir; I would not say that. I would say it was fear of what was back of the United States marshal.

Q. That would be your judgment about it?

A. My judgment would be that it would be fear of the federal court back of the United States marshals rather than of the United States marshals.

Q. When did you preach your sermon against lynching?

A. Sunday, immediately following the first attempt at lynching.

Q. How many times did you repeat it up to the time of the lynching, or after it?

A. That was the only time I preached it. I did not repeat it at all.

Q. You did not repeat it?

A. No, sir.

Q. Was there any excitement at all during the time between the first mob and the final lynching?

A. I can not say there was no excitement at all. I can only say it did not attract my attention.

Q. How much were you around the court-house outside of when you were there during the trial?

1697 A. I was at the court-house nearly all the time during the trial.

Q. How long did the trial last?

A. I do not recall now. It lasted some time, but the length of time I do not recall.

Q. Give us your best impression.

A. It was a number of days.

Q. Was it a week?

A. I think it was nearly a week; not a week.

Q. You say you were there all the time?

A. I was there all the time, but I pay no attention to dates.

Q. It made a good deal of impression on you, naturally?

A. The trial did; yes.

Q. Do you think it is a fact that it only lasted two days—the actual trial?

A. I do not recall. I would like to say here that I make no record whatever of dates, and I pay no attention to dates.

Q. Your recollection is not accurate as to dates, you intend to say?

A. As to dates, yes.

Q. You can not tell how long the trial lasted?

A. No, sir. I know I was at the court-house a number of days during the week. How many days the trial lasted I do not
1698 know. I spent a good deal of my time at the court-house.

Q. I understood you to say, in answer to Mr. Cooke, that you had seen the notice of the appeal, that the appeal had been granted by the Supreme Court, in the afternoon papers, before you went to this pastors' association. What paper was that?

A. If you have it that way, you misunderstood me. I did not say I had actually seen it. I knew that the appeal had been granted, but whether I saw articles in the paper or not I do not recall.

Q. Did you follow the papers during that time and read the articles about the Johnson case?

A. I read the papers then, as I do now.

Q. Were you particularly interested in the Johnson case?

A. Yes, sir.

Q. Did you read articles and editorials on that question as they came out?

A. I did not read editorials as much as I did articles, yet I think I read most of the editorials.

Q. You were interested particularly in that case, were you not?

A. I was interested in the case.

Q. It excited a great deal of public interest?

A. Yes, sir.

Q. It was the most absorbing case there was at that time?

1699 A. It was. There is no doubt about that.

Q. You say in your opinion the fact that there was an appeal granted by the Supreme Court did not have any effect on increasing the excitement or danger of lynching. Do I understand you to say that?

A. I did not say it had no effect.

Q. What would you say about it?

A. I say, from my point of view, from my observation, I saw no increase of excitement among the people.

Q. When was it you first heard of it; how long an interval of time was there, when you first heard of it, and when these observations were made by you on the public excitement?

A. I could not say as to that, because my observations were made constantly.

Q. What I want to get at—and I want to make my question plain, of course——

A. Yes.

Q. Is this: How long had you observed the effect of the action of the Supreme Court on the public mind, before the lynching occurred; how many days had it been that you had been knowing that?

A. I do not remember the exact date that the Supreme Court granted the appeal.

Q. Have you any definite recollection as to how long it had been, and how much you had heard about it—whether you had heard it one day or a week before you had that pastors' union, for example?

1700 A. I have not any definite recollection on that subject.

Q. You have no definite recollection?

A. I have no definite recollection as to the number of days. I have a definite recollection as to the condition of the public mind. If you were to ask me now, on the stand, the date I was married on, I could not tell you. I am positive of the fact that I am married, but I could not tell the date. That is the reason I make the statement, to explain the fact that I pay no attention to dates.

Q. Without asking you the date, or day of the week, I want to find out how long you had been making observations of the public mind, as to the effect of the action of the Supreme Court before this.

A. From the time the action was taken.

Q. Have you any recollection now as to how long it was?

A. No, sir.

Q. Can you state whether it was a week or ten days, or two weeks?

A. I do not think it was that long.

Q. Was it a day? You say you do not think it was that long. I say, was it a week, or ten days, or two weeks?

A. I have said that I could not tell you the number of days, because I paid no attention to the number of days—none whatever. I just simply know that there was an appeal granted, and that during that time I was here in town, mixing and mingling with the people, and with our pastors' association, and my recollection is it was a

1701 comparatively few days.

Q. Was it before that pastors' association meeting?

A. Yes, sir. The pastors' union met the morning that Johnson was lynched.

Q. And your recollection is that it was a few days before that?

A. My recollection is it was before that.

Q. Did I understand you to say a few days, a moment ago?

A. A few days. I do not know whether it was one, two, or three, but it was somewhere in that neighborhood.

Q. Then the value of your observations of the public mind would depend a good deal on how long it had been, and how much you had mingled with the public between the times, would it not?

A. What is the question?

Q. I say, the value of your observation of the public mind would depend a good deal on how long it had been since the appeal had been granted, and how much mingling you had done with the general public in the meantime, would it not?

A. Yes; but I mingled with the public from the time, and observed from the time it was granted, notwithstanding the fact that I do not remember the number of days.

Q. You were mingling with the public during that time, and observing the effect on the public mind?

A. I was here, and following my regular plan of work. My regular plan of work is to mix and mingle with the people more than I stay in my study.

Q. And you had been mingling with people from the time
1702 that appeal was granted until you went to that pastors' union?

A. Yes.

Q. What is the title of the pastors' association?

A. The Chattanooga Pastors' Association.

Q. What time of day was their meeting held?

A. From 9 to 10 o'clock in the morning.

Q. Had you read the morning paper before you went there?

A. I think so.

Q. Do you remember it?

A. I remember that I knew of the appeal. I knew of the condition of things, but I do not particularly recall just now that I read the paper that morning. But I am almost positive I did, because it was my custom to read the morning paper.

Q. It was your custom to read the morning paper?

A. Yes.

Q. And the evening paper, too?

A. Yes, sir.

Q. Who did you see before you went to the pastors' association at 9 o'clock? Who did you mingle with?

A. I can not tell you. I came from my home out on Oak street, and went down to the pastors' association. We usually, some of us, meet and talk in one of the rooms before we go to the association. It is the rarest thing in the world for me to miss a meeting of the association. I am nearly always fifteen minutes ahead of time.

1703 Q. I infer that you went from your home to the pastors' association, and that you had met no one, probably?

A. I can not say that I went directly, because frequently I go earlier, in going to the pastors' association. I go first to the church and get my mail, and sometimes I go downtown.

Q. I am asking about your recollection on this particular date. Have you any recollection about it?

A. I have no recollection of my particular movements that day. There was nothing to call my attention to any particular movement on that day than any other day.

Q. So far as you now recollect——

A. Had there been any excitement that would have attracted my attention, and then I might have been in a position to have fastened on that day particularly, but that day was just the same as any other day.

Q. What I ask is, do you recollect seeing anybody or talking with anybody from the time you read the morning paper at your home, if you did read it, until you went to the pastors' association and saw the other pastors?

A. I can not say that I remember talking to anyone particularly at all. I can say this: That it is customary, as I said a few moments ago, with me, to get there a little early; and I then usually discuss with members of the pastors' association anything that has occurred.

Q. I did not ask for your usual custom, but for your recollection. If you have a recollection is what I want to get at. But merely your usual custom I do not ask about. If you recollect it I would be glad to have it.

1704 A. I have no particular recollection of that day differing from any other day; but I as frequently as any other way, went first to the church, and then down around through town, and then back. I suppose it would not happen once in a month that I did not talk with from one to six people, or perhaps more, before I reached the pastors' union. If I go in a car, and if there is any man on the car at all that I know, I usually look him up and talk with him, and it is the same if I go down the street and meet anyone. I say that day did not differ with me from any other day, so as to call particular attention to any one man or any men I spoke to. I know one thing: there was no discussion upon that appeal that morning, or any excitement or anything of that sort. I just remember that.

Q. That is not my question. My question is, simply, if you recollect where you went that morning before you got to the pastors' association.

A. I think I have answered that by saying no more so than any other morning.

Q. Have you a distinct recollection of being at that association that morning, except from the fact that it was customary?

A. I have a distinct recollection, because I made the report that morning of my visit to the central labor organization.

Q. Doctor, did you know of the published statement made by Mr. Thomas, one of the counsel for Ed Johnson, as to the reasons why no appeal was taken in the Ed Johnson case?

1705 A. I remember reading that.

Q. You remember, do you not, that one of the reasons given, in substance, was that he said they had come to the conclusion that he would be lynched if the appeal was taken.

A. Yes, sir; I remember that.

Mr. LYNCH. Wait. We want to object to that question, because it is asking this witness for somebody else's opinion and for only a part of somebody else's statement; because if it is competent at all the whole document should be introduced and not merely an excerpt.

By Mr. SANFORD:

Q. I do not ask for anything except whether or not you recollect that, Doctor. I do not call for any other answer except as to whether or not you recollect it.

A. I thought you asked for my opinion.

Q. No, I did not ask your opinion. I asked for your recollection.

A. I remember reading it; yes, sir.

Q. In your judgment, Doctor—I do not ask for your opinion in this matter—would not the fact that Johnson was directly tried and found guilty and sentenced to be hung naturally tend to take away the danger of mob violence? In other words, if the lawless element of the community was convinced that he was going to be hung in a few days by due process of law, that would take away from the danger of lynching? Is not that the fact.

A. I think so.

1706 Q. And is not the fundamental basis, generally, of that lynching spirit, that spirit of lawlessness against which you preach, the objection to delay? Does not that lie at the root of it?

A. I would not like to answer that question——

Q. In your judgment, I mean.

A. I have studied the subject of lynching some little, and while that is a part of it, I would not like to go on record as saying that that was, in my judgment, all.

Q. Do you not think it lies at the basis of it?

A. Not in a matter of this sort.

Q. You do not think, in a matter of this sort, that the desire for immediate punishment and quick and speedy justice lies at the root of it?

A. I think that is part of it, and I think the other part is the objection to the woman going on the stand before men and testifying in such a case.

Q. That, in your judgment, plays a very considerable part in the matter?

A. The largest part, in my judgment.

Q. Do you not think that when the public has become convinced there has been guilt in a case of that sort that they look with great indignation upon delays, and that the lawless element of the community are determined, as a rule, to have speedy punishment for offenses of that sort?

A. I would not answer by saying the lawless element. I would say that all people look with indignation upon useless delay.

1707 Q. Is not that indignation, if they apprehend delay, in your judgment, apt to provoke the lawlessness against which you preach, to wit, the lynching?

A. I think so.

Q. Then whenever it becomes evident that instead of speedy execution on the day fixed there would be a delay, would not that, in your judgment, have a tendency to inflame the passion of the lawless element of the community, and have a tendency to cause them to take the matter into their own hands?

A. It probably might have a tendency, but I believe that the mere interference at this time would not have done so; but had the new trial been granted I believe that the minds of the people would have been inflamed, and that the danger would have come then.

Q. But it did come.

A. You asked what I thought, and not what happened. Yes, sir; it came. I will say that.

Q. In your judgment, would not the danger of lynching be much greater when it was known in the community that there was to be an indefinite delay, with the possibility of a new trial, than when it was expected he would be executed by the sheriff the next day under due process of law?

A. It is a fact that he was lynched.

Q. Disregarding the fact——

A. I wanted to add that as an addition to the answer I desired
1707½ to give. That my judgment is not in harmony with your statement is evidenced by the fact that I was never so completely surprised in my life as I was when I got downtown the next morning and learned that Ed. Johnson had been lynched.

Q. So that in your judgment the fact that it was understood in the community by the lawless, as well as the lawful element of the community, that there was to be an indefinite delay on account of the granting of an appeal, with the possibility of a new trial, would not increase the danger of lynching?

A. I do not say it would not increase it. I simply say I do not think it would increase it to that extent where there was any danger, because I was astounded.

Q. You do not think it would increase it to any appreciable extent?

A. No, sir; I was astounded next morning when I learned Ed. Johnson had been lynched. I was never as completely surprised in my life.

Q. You do not think that delay would increase the danger to any appreciable extent?

A. I think it would increase the danger, because anything might, in a way, increase the danger, but I do not believe it would increase the danger sufficiently to cause any apprehension. It did not, in my mind, and, as I say, I can scarcely find words strong enough to express my surprise when I learned the next morning that Ed. Johnson had been lynched. I might say further that I sup-
1708 pose scores of men that I met that day expressed the same opinion.

Mr. SANFORD. I object to that as an entirely incompetent.

Mr. COOKE. You brought it out.

By Mr. SANFORD:

Q. You mean an opinion expressed the next day?

A. Yes.

Mr. SANFORD. I did not ask what anybody else said, and I object to that.

The WITNESS. I did not intend to bring that in, but I thought it was a part of the answer.

Redirect examination by Mr. COOKE:

Q. Doctor, Mr. Sanford asked you whether or not in your opinion the granting of the appeal, and thereby creating an indefinite delay in the Johnson case, would arouse the public indignation. I will ask you to state whether or not the granting of that appeal did create in the public mind the feeling that any indefinite delay was to be had in this case?

A. Not to my knowledge.

Q. The public did not know anything about the appeal to the Supreme Court of the United States, as a matter of fact, did they—about what sort of process that would be?

A. I do not know.

1709 Q. State whether or not the public of Chattanooga or the community generally knew anything about what sort of proceedings would be had under an appeal to the Supreme Court, as to whether there would be any delay or not about it?

A. I hardly think they had any idea of it.

Q. It would only be the lawyers who would know what that meant, with reference to delay, would it not?

A. I might say this, that in the conversations and expressions along that line that I had, it rather appeared to me that the people were confused in their minds about what would be and what was the condition of the thing, and just exactly the relationship that the prisoner sustained to anybody.

Q. Was it not the fact that the fact that he had become a federal prisoner increased his safety rather than added to his danger?

A. That was my observation.

1710 Hon. C. D. CLARK, a witness produced on behalf of the defendants, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. LYNCH:

Q. Judge Clark, are you the judge of the United States District Court for this district?

A. Yes, sir.

Q. I will ask you if you were the judge who heard the habeas corpus proceeding at Knoxville in the case of Ed. Johnson?

A. Yes.

Q. I will ask you, Judge, if you live in Chattanooga, and if so, how long you have lived here.

A. I have lived here since the spring of 1883.

Q. How long have you been federal judge here?

A. Since January, 1895.

Q. Judge Clark, I will ask you if, when that application for a writ of habeas corpus was heard and argued before you, any statement was made in your court or in your presence, there or elsewhere, that the stay of execution by you, or that proceeding, would cause Ed. Johnson to be lynched?

A. I never heard such a thing suggested in any manner whatever; nothing even suggestive of anything like that. I never heard it in court or out of court, or from any source whatever. It strikes me it is perfectly absurd, in view of what actually occurred.

Q. What order did you grant in that matter, Judge?

1711 A. I granted an order staying any further proceedings in the case for ten days. That, as I stated at the time, or thought, was something of a doubtful power; but I determined to exercise it to enable the defendant to secure action by the Supreme Court of the United States or a judge of the court.

Q. Now, Judge, that left the case in this attitude, with an order from the state court to the sheriff to execute the defendant and an order from you to stay the proceedings. I will ask you if, in that condition of affairs, any suggestion was made in reference to procuring a reprieve from the governor in order to comply with your stay; and if so, by whom the suggestion was made?

A. Of course, I do not know what the judgment or order of the state court was, but I was informed to that effect. The hearing of the Johnson case was after the regular court hours, after supper and at night mainly, if not entirely. Next morning Judge McReynolds, of the state court, called me up from Chattanooga over the 'phone and told me that he did not feel quite sure that I had the power to suspend the execution of the judgment of the state court, and suggested that he had a call in, I think, for Governor Cox, and that he was going to take the subject up with him and have the governor grant a reprieve or a stay of execution for the ten days during which I had made the order, so as to avoid any apparent clash of authority; and I told him I thought it would be a very proper thing to do. I give you the substance of it; I am not undertaking to repeat the words.

1712 Q. Judge, did anything occur at that time, or was anything said at the trial on the part of the representatives of the State or on the part of anyone, that caused you to apprehend any mob violence to this man?

A. None in the least.

Q. I will ask you, after you returned to Chattanooga, after Judge Harlan granted his order, and after the appeal was granted by the

supreme court, if that order of the United States Supreme Court and of Judge Harlan caused you to apprehend any mob violence?

A. No, sir; it did not. I will tell you what did occur. On account of the decidedly emphatic charges in the petition and some statements that were made on the trial by certain witnesses to the effect that the attorneys for the defense had been to an extent intimidated in making the defense for fear the colored man would be lynched if they interposed the defense—this went mainly to the jury question, and how it was made up—I asked my secretary on the day that I was here, on Monday, on my way to St. Augustine, if he had heard of any suggestion or hint of any violence or dissatisfaction with the situation; and he told me he had not.

Mr. SANFORD. I am obliged to object to that, Judge, as incompetent and simply hearsay.

The WITNESS. That is right; yes.

Mr. LYNCH. We want to get it in subject to the objection.

The WITNESS. At all events, I did not have any apprehension. After I had received Mr. Justice Harlan's telegram and after
1713 I had said to the jailer or to Judge McReynolds—I am not positive which now, but to one of them—that they would consider Ed Johnson in the custody of the United States from that date, and would charge his expense account to the General Government, I called up some one of the defendant's attorneys—my recollection is Judge Shepherd—and found out that he understood the appeal had been allowed by the Supreme Court of the United States, and stated to him that I would be here all day at the office and would leave for Florida that night.

By Mr. LYNCH:

Q. Judge Clark, I will ask you if the attorney to whom you talked, or any other attorney for the defendant Johnson, or any other person, suggested to you the necessity or even the propriety of taking steps to protect your prisoner, the federal prisoner Johnson?

A. I never heard the remotest suggestion; and I did not think the man was in any danger. I thought it was simply the noise that is generally made by people who really do not expect to do anything.

Mr. SANFORD. I desire to note an objection to Judge Clark's opinion in that matter. I regret to be compelled to object to his testimony.

The WITNESS. That probably is a matter of opinion. I will say that I had heard no suggestion and that I had no thought that there was any danger on hand anywhere.

Mr. SANFORD. I object to any testimony as to Judge Clark's own opinion or his own thought.

1714 Mr. LYNCH. Our position on that is that of course contempt is a matter of intention and of belief, and of course if the Judge, who lived there, and whose prisoner Johnson was, did not apprehend any danger, it was natural to presume that the sheriff would be in a like state of mind.

The WITNESS. I suppose you think they would not probably have let the judge know anything about it.

Mr. LYNCH. Neither would they the sheriff.

The WITNESS. Anyway, I had no thought of anything of that sort.

By Mr. LYNCH:

Q. I will ask you, Judge Clark, if you did not make an investigation of that condition through your secretary, to see if there was any danger?

A. I do not recall that I made any investigation. I may have done so.

Q. I will ask you whether or not you made inquiries through your secretary?

A. Yes; I certainly made inquiry.

Mr. SANFORD. I object to that as calling for hearsay testimony.

By Mr. LYNCH:

Q. Did you talk to the attorneys for the defense in reference to the possibility of any danger?

A. No; I did not talk to them about any danger. I merely called up one of them to say that I would be here all day. Now, to tell you the reason I did that, if it is competent, I knew that the colored man Ed Johnson had been carried by the state authorities or sent by Judge McReynolds to Knoxville—that is the way I understood
1715 it at least—and that he was brought out of the Knoxville jail when the question was tried before me. Now, on account of that I would, after getting Mr. Justice Harlan's telegram, if application were made, have ordered the man to any jail where it was desired to send him.

Q. I will ask you, Judge, if you had apprehended danger to the man, or if application had been made to you, if you would not have ordered his removal to some other jail?

Mr. SANFORD. I object to that question as calling for a purely hypothetical answer. It is a mere supposition.

The WITNESS. Well, it is. Shall I answer that or not?

Mr. LYNCH. Yes, sir. We want it answered, subject to the objection.

Mr. SANFORD. I also object on the ground that it is a leading question.

A. If it had appeared that the prisoner was in real or great danger—if that had appeared to me—I am quite sure I would have made the order of my own motion, or would have called up his attorney and suggested that he made an application for his removal. I am telling you now how I think I would have acted in such a situation as that.

By Mr. LYNCH:

Q. Judge Clark, how long have you known Captain Shipp, the defendant?

A. I have known him ever since I have lived in Chattanooga, I think, practically. It may have been perhaps a year after I came here before I was well acquainted with him.

1716 Q. Do you think you know his general character?

A. I think so.

Q. Is it good or bad?

A. It is good.

Q. From that general character would you believe him on his oath?

A. I would.

Q. What is his general character on the subject of peace and good order?

A. It is good.

Q. Judge Clark, I believe you say you have been federal judge here since 1895?

A. Yes.

Q. I will ask you if the people of your district have always obeyed the orders and paid respect to the orders of your court?

A. I think so.

Mr. SANFORD. I object to that as calling for entirely incompetent matter and not relevant to the issues.

The WITNESS. I suppose I shall answer this and let the exception be noted?

Mr. LYNCH. Yes, sir. It takes a wider range than the ordinary examination.

The WITNESS. Yes; I have always felt that all due respect has been shown to any order of my court; and I always credit the good lawyers for it, if you want to know to whom I give the credit. I have never yet found a lawyer that showed any disposition to disregard an order of the court, so far as I have had any experience.

1717 By Mr. LYNCH:

Q. Judge, I will ask you if you did not have many years' practice in the state court prior to your appointment in the federal court?

A. Yes. I began practice in 1877.

Q. I will ask you whether or not, throughout this country, there is a very great respect as well as fear for the federal court and the power of the Federal Government behind the court?

A. Well, I do not know about the fear, but they respect the federal court and its orders very much. I have noticed that during the whole of my experience.

Q. Judge, I will ask you if you remember some internal troubles here in the State a couple of years ago, in which the governor called out troops at Tracy City to protect mining property?

A. Yes, sir; I remember that.

Q. I will ask you whether or not an application was made to you for an injunction to restrain the defendants from violence in that case?

A. Yes.

Q. And whether or not the purpose was announced and carried out of withdrawing the state troops when you made your order enjoining them from violence?

A. It was stated to me that it was expensive to keep the troops there, and the governor was getting very anxious to withdraw them.

Mr. SANFORD. I object to that testimony as utterly incompetent.

1718 By Mr. LYNCH:

Q. I will ask you whether or not it was brought out in the history of that trial that the troops were withdrawn on the granting of that injunction?

A. That is my information. I granted the injunction, the troops were withdrawn, and I never heard of any trouble afterwards. To tell you the truth, I rather expected we would have a collision; but we did not have it.

Cross-examination by Mr. SANFORD:

Q. Judge, how long had you been up at Knoxville before that application was made to you for a writ of habeas corpus?

A. I really do not know, but my recollection is several days.

Q. Where had you been before that?

A. I could not tell you that. I had been holding court at Knoxville. It was either a special or a regular session there; I think the regular session.

Q. When did you come back from Knoxville to Chattanooga?

A. My recollection is that I finished up there on Saturday night and came down Sunday morning.

Q. That was the Sunday before the lynching; the day before the lynching?

A. Yes. I got here Sunday morning.

Q. Then you went up to your home on the mountain?

A. My family were in St. Augustine then, spending the winter or a few months of the winter, and I remained right here at
1719 the custom-house. The Treasury Department, on application, allowed me to put a cot in the custom-house, and I sleep here when the family is in Florida.

Q. When did you leave, Judge?

A. I left Monday night at 6.30.

Q. And in the meantime were you mostly here in the custom-house?

A. I was here all day. I was at work on something; I do not remember what case, but I was anxious to get it finished and to dictate the opinion in it, and then go and let the opinion follow; and I worked here in the custom-house all day.

Q. And you were not out and around ascertaining the public pulse on this day?

A. No, sir. I was scarcely out of the custom-house, unless it was a few minutes to get some lunch.

Q. You were busily at work on your opinion in that case?

A. Yes; very decidedly.

Q. As a matter of fact you had no particular opportunity and made no effort to ascertain the public mind in reference to this matter?

A. I did not.

Q. You did not know what it had been and did not know what it was?

A. No.

Q. You had not been here?

A. No. Practically all I ever heard of it was in the trial
1720 of the habeas corpus proceeding at Knoxville and what was incidental to that.

Q. You have been asked whether the danger was suggested. That was not relevant to any issue before you, and no testimony of that sort would have been considered by you?

A. No; I was not investigating anything like that. That suggestion occurred in argument and in the course of the examination as tending to show that the defendant had been deterred from making some points that he ought to have made on the way in which the jury was organized, as I recollect it.

Q. On the trial?

A. Yes; that they were afraid to make it for fear it would inflame the public and they would lynch him.

Q. But the question as to whether or not, if you did or did not grant a stay of execution, the sheriff here would keep the prisoner safely or he would be lynched was not a matter before you or referred to in any way?

A. And nothing was suggested or said on that subject.

Q. And there were no issues before you to make that relevant or proper matter for discussion?

A. No; there were not.

Q. Now, Judge, after you got the telegram from Judge Harlan, you sent your private secretary to the sheriff, as I understand it?

A. Yes. I sent him with that telegram and told him to read it to Sheriff Shipp and also to show it to Judge McReynolds and, I believe, also Mr. Whittaker, the district attorney, but I would not be
1721 positive as to Whittaker. I certainly told him to be sure that it got to Mr. Shipp, and that I wanted Judge McReynolds to see it, so that he could take the necessary steps to comply with the spirit of the telegram.

Q. Judge, the attorneys for Johnson in the original case, and those who were present during the trial and were appointed by the court to advise with those attorneys, would unquestionably have had a much better opportunity for knowing the public mind here and the danger of lynching than you would, would they not?

A. I think they would. I was under no duty to make special inquiry and made none.

Q. He was really not your prisoner, was he? I mean, he was in the custody of the Supreme Court at that time?

A. That was the way I looked at it after Mr. Justice Harlan's telegram.

Q. As a matter of fact, you were merely an intermediary for the transmission of that order?

A. That is it; yes; and I would have exercised any necessary power, because it occurred to me that an application might be made owing to the fact that I had found the man in the Knoxville jail, sent there by the state authorities; and I think would have exercised any doubtful power in his favor, just as I had in granting this ten days' suspension, and would have sent him to Knoxville or Nashville or anywhere else that was suggested, if such an application had been made.

Q. But none was made?

A. None was made, and that may have been the reason I
1722 asked my secretary if he had heard of any inflammatory talk.

Mr. SANFORD. I desire to object to statements as to your conversation with him.

By Mr. SANFORD:

Q. As a matter of fact, as I understand, you did not know what the public temper here was, or whether there was or was not any danger, one way or the other?

A. No, sir; I did not. I had a very limited opportunity to know, indeed.

Redirect examination by Mr. LYNCH:

Q. Judge, you stated in response to Mr. Sanford's question that you asked your secretary if he had heard of any inflammatory remarks. I will ask you what his answer was?

Mr. SANFORD. I object to that question as calling for hearsay testimony.

Mr. LYNCH. I understand.

Mr. SANFORD. And entirely incompetent.

A. He told me he had heard nothing.

By Mr. SHEPHERD:

Q. Judge Clark, was it not really about ten days from the
1723 time that you heard the case at Knoxville on the petition for a writ of habeas corpus until the lynching of Johnson?

A. I think the time was about to run out, Judge. I know I thought they were putting it off until a mighty late day to go to the Supreme Court.

Q. But you came back here on the following Sunday morning?

A. Yes.

Q. And then the transcript was obtained and application made to Judge Harlan?

A. Yes.

Q. And Judge Harlan's action was on the next Monday—the Monday of the next week—was it not?

A. Yes.

Q. So that it was about ten days from the time that you acted at Knoxville?

A. It strikes me that it was.

Q. And during the time intervening between your action at Knoxville and the lynching of Johnson, on the Monday of next week, you were here in Chattanooga, were you not?

A. The impression that I have about it is that I worked at Knoxville until the Saturday of whatever week it was that I finished there, and then I came here Sunday morning and remained during the day, and then Monday morning I got Mr. Justice Harlan's telegram.

Q. The next Monday?

A. The Monday following; yes. I was not here a week.

By Mr. PENLAND:

Q. You had two weeks' court at Knoxville?

1724 A. Yes; I do not think I was here a week from the time I came from Knoxville.

By Mr. SHEPHERD:

Q. The point is, did you come home the Sunday morning following your action that night at midnight in Knoxville in the Ed. Johnson case?

A. I do not recall about that. I do not think I did.

Q. You stayed up at Knoxville the next week?

A. Yes; until I finished up at Knoxville. I am sure I never came home, because my family was in Florida, and I would have had no reason to quit a place like Knoxville and the Imperial Hotel to come here to the custom-house and make that trip. It is a tiresome trip.

Q. Judge, you referred in your testimony to having given some notice to me, Mr. Shepherd?

A. Not any notice. I merely called you up—you or some other counsel for the defendant—and stated that I would be here all day. That was unaccompanied by any suggestion——

Q. So I understand; but I want to keep the record straight as to myself; that is my object. You referred to me as the counsel for the defendant, Johnson, as I understand it?

A. Yes.

Q. I will ask you if it is not true that Hutchins and Parden, some negro lawyers, were the lawyers for Johnson in his petition for habeas corpus?

A. That was the case; and I requested you at Knoxville to help them out about it.

Q. You appointed me in Knoxville to present the case——

A. Yes.

1725 Q. Because you thought the colored lawyers did not know enough about it?

A. I did not think they knew any too much, and I was anxious for the man's rights to be protected, and I asked you to do it, or appointed you—I do not know which you would call it; I did one or the other; and you did so.

Q. With the consent of the negroes?

A. And it was in view of that that I called you, if it was you that I called.

Q. That is right.

A. And I merely said I would be here all day, and ascertained—if it was you—that you understood what action Mr. Justice Harlan had taken.

Mr. SANFORD. I make the same objection to the competency of that last testimony, of course.

(Thereupon, at 12.35 p. m., a recess was taken until 2 o'clock p. m.)

1726 AFTER RECESS.

The hearing was resumed at the expiration of the recess.

Mr. LYNCH. May it please the court, before we go into the examination of witnesses, we want to offer in evidence the last appointment and commission of Joe Clark as deputy sheriff, under Sheriff Shipp's last term. It was asked for by the attorney-general, and we offer the commission in evidence and pass it to the stenographer to be copied into the record.

The above-mentioned paper is marked "Exhibit Clark, page 1726" and the original is appended hereto.

Said papers is in the words and figures following, to wit:

"Sheriff's office, Hamilton County, Tennessee. Jos. F. Shipp, sheriff.

"To whom it may concern:

"Know ye, That reposing special trust and confidence in the sobriety, discretion, integrity, and diligence of J. C. Clark, of Hamilton County, Tennessee, I hereby appoint him a justice court officer, with full power of a deputy sheriff.

"The appointment and authority hereby conferred is however given, conditioned upon habits of sobriety and conduct becoming a deputy sheriff.

"I reserve the right to revoke this commission at any time.

1727 "Given under my hand at Chattanooga, Tennessee, the 3rd day of Sep., 1906.

"J. F. SHIPP,
"*Sheriff of Hamilton County.*"

Mr. LYNCH. We want to recall Mr. Robert Pritchard, on behalf of the sheriff and his deputies.

ROBERT A. PRITCHARD, who had been previously sworn and examined as a witness, was recalled and testified as follows:

By Mr. LYNCH:

Q. You are the same Robert Pritchard that has been on the stand before?

A. Yes, sir; R. A. Pritchard.

Q. I believe you said you were connected with the Chattanooga Times at the time of the lynching?

A. Yes, sir.

Q. I wish you would tell what you were doing that day, what particular work you were doing that day.

A. My title at that time was assistant managing editor of the Times. I came back from Florida that morning. The train was late and got in about 11.15. That was the first day Mr. M. B. Ochs was connected with the paper as managing editor. I went up
1728 to the staff meeting at 12 o'clock, and he was there. He requested me to go out and go around town and look up some news, although that had not been my work. I did. I went out and went around town all afternoon, to different places.

Q. I will ask you whether or not you were, however, an experienced news gatherer here; you had been here for years?

A. I was a reporter before I became city editor.

Q. You did, in fact, go around town gathering news, did you?

A. Yes, sir; I went around town. I think it was a political story he wanted me to write, but I am not positive.

Q. In your rounds that day, and that afternoon, did you hear any suggestion of a mob?

A. No, sir.

Q. Or any danger to Johnson?

A. No, sir; I did not hear anything of the kind.

Q. Had you ever heard of or noticed any excitement whatever with reference to the order of the order of the Supreme Court of the United States?

A. The first I knew about the order of the Supreme Court I was at the office and Mr. Chivington came in, and he had heard about it, and we talked it over there. I think Mr. Wert and Mr. Chivington, and probably one or two others and myself were there.

Q. Was the town, or the people generally, excited over it?
1729 A. No, sir.

Q. Or exercised over it in any way?

A. I can not say that I had heard of the order while I was out in town.

Q. Do you know whether you heard it mentioned out in town at all?

A. I had not heard it mentioned. I did not know anything about it until I got to the office.

Q. What time was that?

A. About five o'clock.

Q. In your rounds up to five o'clock in the afternoon, you had not heard it mentioned in the city at all?

A. No, sir.

Q. It was not a matter of discussion?

A. I had not heard it mentioned at all. I do not know whether it was a matter of discussion or not.

Q. I will ask you what you did that evening?

A. I worked until seven o'clock. About seven o'clock I asked permission to get off that night to go and see a young lady that was visiting here. I went to the Calumet Club——

Q. A social club here?

A. Yes, sir. I left there about 8.15, and went out to this house on Oak street.

Q. That evening, at the club, and in the editorial rooms of the Times, I will ask whether or not you had heard any discussion of any prospective mob, or any danger?

1730 A. At the Times office, as I remember it, we talked about the order, but there was nothing apprehended about a lynching. The fact is, if there had been I would not have been allowed to get off that night.

Mr. SANFORD. I object to the witness' hypothetical answer.

By Mr. LYNCH:

Q. You heard no discussion of it at the club?

Mr. SANFORD. I object to the question as leading.

By Mr. LYNCH:

Q. You heard no discussion of a prospective mob at the club?

A. No, sir. The first information I had, I had an engagement with Mr. Mark Hutchins to go out to this house, or rather to meet me out there. He did not come, and about half past nine I called up the club to get him and Mr. Alfred Burke answered the telephone. I asked if Mr. Hutchins was there, and he said: "No, I guess he is out to the lynching." I asked what lynching——

Mr. SANFORD. I object to the statement of conversation of that sort.

The WITNESS. That was the first I heard.

Cross-examination by Mr. SANFORD:

Q. Was your work that day in the line of getting advertisements for the paper—work of that sort?

A. No, sir; writing stories was my work at the time.

1731 Q. You were not at all a business man?

A. No, sir; not in the slightest.

Q. Are you related to Robert Pritchard, one of the counsel for the defense?

A. I am his son.

Q. You are his son?

A. Yes, sir.

Q. Did you write up an account of that thing, that night?

A. No, sir; I could not see the typewriter. My eye was practically closed up when I got to the Times office—my left eye.

Q. You did not write any report at all?

A. No, sir; I left the office immediately and went back to the house where I had been, and stayed there probably twenty or thirty minutes.

Q. It was not the effect of the drinks you had had that prevented your writing at all?

A. No, sir; I had had three drinks before leaving the club; but the effect of that blow made me—well, groggy.

Hon. S. D. McReynolds, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

1732 By Mr. Lynch:

Q. Judge McReynolds, you are judge of the criminal court of this circuit?

A. Yes, sir; the sixth judicial circuit, State of Tennessee.

Q. That includes the city of Chattanooga and the county of Hamilton?

A. Yes, sir.

Q. How long have you been judge of this circuit?

A. A little over four years.

Q. How long have you lived in Chattanooga?

A. About twelve years, and a little over.

Q. Judge McReynolds, Ed. Johnson was tried for rape before you, was he not?

A. Yes, sir.

Q. Do you remember the circumstance of the assault on the jail soon after he was arrested?

A. Soon after he was arrested; yes, sir, very well.

Q. Did you witness that assault, or any part of it?

A. I witnessed a good big part of it—about all there was, I guess. The crime, as I remember, was committed January 23rd, Tuesday, and Johnson was arrested on Thursday, the 25th. There was an order made by myself to Capt. Shipp to take Johnson out of town. There was another man arrested with him as a suspect, at the time, and he left here Thursday afternoon. That night I was down close to the jail, at Dr. Hogshead's office, within a block of the jail,

1733 when the deputy clerk of the criminal court, Mr. Pemberton, came after me. I went to the jail before any mob was there. If you want me to go on——

Q. I want you to tell it all; yes.

A. When I got there Mr. Frawley was there, and Capt. Brown was there, and some others came in before any mob came. I remember speaking to Mr. Pritchard before they came there. In passing the corner of Seventh and Walnut I saw quite a crowd of men standing there, and walked through them. I could not make out who they were. Getting to the jail, I had Mr. Frawley call Chief Moseley at both places, his residence and police headquarters, or rather at his phone at police headquarters. He was at neither place. I turned around and just about that time Chief Moseley walked in. I spoke to Chief Moseley about these men being down there, and told him he had better send half a dozen policemen down, and I thought he

could scatter the crowd before they congregated at that place. He went to the telephone and about that time they came into the jail on us. I do not know where they did come from. When they came in Chief Moseley, Mr. Frawley, and Mr. Brown went to the iron door. I remember their asking for Capt. Shipp, and they were informed that Capt. Shipp was out of town; that Capt. Shipp had gone away with the prisoner. Then they said, "We want that nigger Johnson." One of the deputies said, "You won't get him." With that they made for the door and the mob right after them. They filled up the jail. I got in there and tried to talk to them. Finally I tried to get the police out. I went to the telephone, while
1734 they were in there and called up police headquarters and told them to send the police up there. They informed me that no one could order out the police except the chief. Finally I went back and told the chief, and then went back to the telephone and told them this was under the chief's orders. That is the way I got some of them interested. Finally the chief came away from the door. When Matt Galloway got through the crowd and got to the door the chief came and did some talking himself.

Q. I will stop you there to ask you especially about Galloway's conduct that night. Did you observe it?

A. Mr. Galloway came in, just as I have stated, a few minutes after they had got there and relieved, as I now remember, Mr. Fred Frawley at the door, and he and Capt. George Brown stood at the jail door and withstood the abuse and threats, as brave as any men I ever saw. When I was in there I had a way that I wanted to get out——

Q. That was before the police got there, was it not?

A. Yes, sir; except that Chief Moseley was there.

Q. What did Galloway say; do you remember?

Mr. SANFORD. I object to the statement of what Galloway said.

The WITNESS. I do not know what he said, anyway, Mr. Sanford.

By Mr. LYNCH:

Q. Go ahead.

1735 A. I was in there once or twice, trying to talk to them, and I know they were pointing guns at me and making threatening remarks. When we did get them out of the second office, I remember very well Joe Clark and myself were the only ones in there, when brickbats commenced coming in at us. I will say for Galloway and Brown that no men ever showed more nerve and demeaned themselves better than those two gentlemen did on that evening.

Q. Were they there some time before the police got there, or not?

A. Yes; Capt. Brown was there from the time the mob first came, and Mr. Galloway came in just a few minutes later; and they stood at that door until the police came. I can not say how long it was before the police got there, but it must have been half an hour or three-quarters of an hour before we were able to get the police. We

had to get them from different sections of the city and line them up out there in front of the gate, in front of the jail, and we then brought them in the middle door, and took them out one by one.

Q. When you made the speech to the mob, did they do as you asked them? If not, what response did they make?

A. I did not get to make much of a speech. I attempted to talk to them some two or three different times. I got them quieted when I first went in there, except for these threats and threatening remarks; but I assured them that Johnson was not there. They did not pay any attention to that.

Q. What was it that quieted them, if anything?

1736 A. Well, I would judge that what had more to do with getting the crowd away from there was the fact that a committee went through the jail and finally determined that Johnson was not in there. I know that when I was talking to them at one time I said to them: "Johnson is not here. He has been carried away, and I state that, gentlemen, to you positively. I know he is not here." Then some one said, "We want Smith and Westfield." They were confined in the jail. I said, "Well, gentlemen, you can not get those people. I have a day set in court for them." The first crowd of men inside the jail was put out by the efforts of the officers and the police. The police came in the middle door and took them out one by one, shutting that door until we got them out of the office where Capt. Shipp and the chief deputy stays. The police threw themselves across that side door, and then brought them out one by one, until there were only about five men left in there with guns. Then there was sufficient power there to overpower those men; but that only angered, it seemed, the people on the outside, because they commenced throwing brickbats through there and breaking down doors. A good deal of destruction of property took place after that time. In fact, I left there before it was all over. I got enough of it.

Q. You did not think it was any place for a judge?

A. I thought the judge had other duties to perform, after getting the officers in there.

Q. The deputies, Fred Frawley, Galloway, and Brown, did they leave when you did, or did they stay?

1737 A. Oh, no; they stayed. That is, I left them there and have every reason to believe they stayed. Of course I could not state positively who was there.

Q. Where was Capt. Shipp that night; and this defendant, Johnson?

A. I had made an order that afternoon to remove Johnson to Knoxville. Capt. Shipp had gone with him, and he got as far as Dayton and concluded that the safest course for him to take was to Nashville because there was some talk, or he got some information, that people from here were going to intercept him at Knoxville, so he changed his route and went down the old Tennessee Central to Nashville, so I am informed by him.

Q. Did he have any other prisoner with him?

A. I can not state of my own knowledge. I am informed that he did.

Q. Refreshing your recollection, did you not make the order to include Wyatt, who was also arrested on suspicion?

A. I do not think it did, but it may have. I know from information that he did carry both of them with him to Nashville; but it was left to a great extent to Capt. Shipp as to where he should go.

Q. The other darky, Wyatt, was not held after the young lady went down to identify him?

A. He was released a short time after his arrest.

Q. Soon after that was Johnson indicted and put on trial?

1738 A. My court was in session at that time. The grand jury had adjourned over until another date. I issued a special call for the grand jury on Friday, January 26th, and called them in special session on Saturday, January 27th, to investigate this alleged rape, and also the storming of the jail the night of Thursday, January 25th. I charged the grand jury to investigate both matters, but stated to them in the latter part of my charge, at the request of Mr. Whitaker, that they should delay the investigation of the assault on the jail until a later date because he was unable at that time to get such information as he desired and as he thought he could get afterwards. Johnson was indicted on Saturday, January 27th.

Q. What do you know about Capt. Shipp's giving the attorneys for the defense such information as he had with reference to who would testify for the State and the character of the testimony?

A. I know he did that; and I further know that I requested him to do it. They were all in my office, the attorneys for the defense, together with Mr. Whitaker, and I remember Capt. Shipp talking about the case; and I asked him especially there in the presence of these gentlemen, "Captain, I wish you would go over in detail all the proof you have against this man, and give them the names of the witnesses who will testify to this particular state of facts so that they will not be met with any surprise, and so that these gentlemen can investigate it and put up a proper defense for this defendant." That was done.

Q. He did that, and gave them a full statement of the testimony the State had?

A. Yes, sir.

1739 Mr. SANFORD. I object to that testimony as entirely irrelevant to the issues.

By Mr. LYNCH:

Q. Judge, the statement given by Captain Shipp to the attorneys for the defense was a full and fair statement of what the evidence turned out to be, was it not?

A. Yes, sir. The only surprise (and that was a surprise to both sides) was in reference to a clock. Some of the defendant's witnesses proved an alibi by a certain clock, and we sent an officer out to

find the man who put the clock in, and brought him in without knowing he would say the clock was there. That was the only surprise.

Mr. SANFORD. I object to all this evidence as entirely irrelevant and foreign to any issues in this controversy. The question of the former trial has nothing to do with it.

Mr. LYNCH. We want to show, may it please the court, Captain Shipp's fair treatment of this defendant by showing this unusual course of giving his attorneys the benefit of all the evidence he had gathered up from the beginning.

By Mr. LYNCH:

Q. That evidence with reference to the clock was testimony that was not in Captain Shipp's keeping at the time he informed the counsel for the defendant what the state's evidence was?

A. Certainly. He did not know what the proof would be, and then when the party who put the clock in was sent for it was not known what he would state. He was sent for to get the truth.

Q. You, as criminal judge, appointed counsel for the defendant?

A. Yes, sir.

1740 Q. Whom did you appoint?

A. I appointed Mr. Robert T. Cameron, Judge Shepherd, and Mr. W. J. M. Thomas.

Q. I will ask you whether or not he was ably represented.

A. He certainly was.

Q. How long did it take to try the case?

A. As I remember, we commenced on Tuesday, February 6th, and finished the trial of the case somewhere about noon on Friday, February 9th.

Q. I will ask you if there was any undue excitement during the trial around the city of Chattanooga.

A. Well, there was some excitement when the prisoner was first brought back here, and we took extra precaution in order to avoid what we thought might be trouble.

Q. Now, Judge, after he was tried and convicted——

A. I wish to state further, though, Mr. Lynch, that we had a guard there the first day all around the court-house. After the first day that was taken away, with certain officers around there, and Judge Allison held court below; and by the time the trial was over it seemed that the excitement had about all died down. That is the way it appeared to me.

Q. You speak of the excitement dying down. After he was tried and convicted, did you notice any excitement in the city with reference to Johnson?

A. No, sir; I did not. I felt this way. When the attorneys advised me that they were not going to appeal the case, and had

1741 me to bring him over and sentence him, Captain Shipp came to my office and said he was going to carry him to Knoxville.

Mr. SANFORD. I object to the conversation between Captain Shipp and the witness as incompetent and hearsay.

Mr. LYNCH. We want to show that Captain Shipp had every assurance that the prisoner was safe here.

By Mr. LYNCH:

Q. Go ahead, Judge.

A. And I said to him: "Captain, if you carry him to Knoxville it will be on your own orders, because I will not make any order to remove Johnson. I do not believe he is in any danger at the present time." Captain Shipp responded: "For two or three weeks I have been up day and night and I am completely worn-out. I want to get this matter entirely off my hands, and I am going to take Johnson, Smith, and Westfield." I believe that is what he told me. So Johnson was brought over and was sentenced somewhere about half past 3 o'clock on Friday afternoon, February 9th. Captain Shipp immediately left.

Q. I will ask you whether or not Attorney-General Whittaker was with you and concurred with you in that opinion to Captain Shipp that there was no danger.

A. Yes, sir; he was in my office.

Mr. SANFORD. I object to all that conversation between the judge and the sheriff.

Mr. LYNCH. I understand, Mr. Sanford, that you are making the same character of objection to this witness's testimony as you made to Attorney-General Whittaker's.

Mr. SANFORD. Yes.

1742 Mr. LYNCH. As we are going over largely the same ground, we will treat that objection as made.

By Mr. LYNCH:

Q. Judge, after that time and up to the time of the habeas corpus proceedings did you see anything to cause apprehension, or did you hear of any excitement, or did you hear of any threats against this man?

A. I do not know that I did. I do not call anything to mind. I left here about a week after that, I think, and was in Florida until about the 10th of March, I believe.

Q. I will ask you whether or not that statement of yours to Captain Shipp that you thought there was no danger and that you would not give him an order to take this prisoner away was the result of an investigation you had made about the conditions here.

A. Certainly it was. If I had thought the prisoner was in the least danger I would have readily given an order to take him away, as I had done once before.

Q. I will ask you if you were present as a witness in the trial of the habeas corpus proceeding of Ed Johnson against the State at Knoxville.

A. I was.

Q. Just tell in a brief way what occurred there. I will ask you if anything occurred with reference to any statement from you or any

other person to Judge Clark, or to anyone else in your hearing there, that if this execution of Johnson were delayed by a stay order from Judge Clark or for any other reason he would be lynched or hung.

1743 A. I heard no such statement. I have heard that such a report has gone in from the government authorities in this case, that I made such a statement. I want to say that that is absolutely and unqualifiedly false. I never made any such statement, and I heard nobody else make any such statement, but on the contrary that case was finished somewhere about 2 o'clock Sunday, March 11th—the 10th or 11th, I have forgotten which—and we came to Chattanooga, and the next day, on Monday, I got to thinking about this order that he should be hung on the next day and also Judge Clark's order dismissing this petition and giving them ten days in which to apply to the Supreme Court of the United States for an appeal. I thought it was a doubtful proposition as to whether or not that superseded the orders of my court. I thereupon put in a call for Governor Cox to get him to the telephone to ask him to reprieve Johnson until his time had run out, to apply to the Supreme Court of the United States for his appeal. I did not get him—he was out in the country somewhere—but I made arrangements to speak to him at 6 o'clock that evening. I thereupon called up Judge Clark at Knoxville——

Mr. SANFORD. I object to all this as irrelevant. It is getting outside of the range of our investigation.

Mr. LYNCH. In answer to the objection, I will state that we want to show that the officials did not apprehend any mob violence on account of the delay, because they themselves assisted in giving him the delay and giving him an opportunity to apply for an appeal.

The WITNESS. I made the statement to Judge Clark that

1744 I thought it was a doubtful proposition as to whether the character of the order he had made stayed the execution, and he said: "I do not pretend to say that it does." Then I told him that I had called up Governor Cox and that I had made arrangements to speak to him at 6 o'clock that evening. He said: "I expected the attorneys for the defendant to apply to Governor Cox to reprieve him for ten days." I got Governor Cox about 6 o'clock that evening and talked to him, and he agreed to do it. Thereupon, if I remember correctly—I was in Captain Shipp's office—I turned the phone over to Captain Shipp, either him or Mr. Frawley—I think Captain Shipp personally, though—and had Governor Cox to say to him "I have made this order to-day and don't you carry it out to-morrow," in order to coincide with the order of Judge Clark. Judge Clark called me up again about 6.30 that evening and asked me if I had reached Governor Cox and if the matter had been arranged. I told him it had.

Mr. SANFORD. I object to the testimony as to those conversations, as hearsay, and it is taking a lot of time. That is my principal objection, I may say.

Mr. LYNCH. We have no other witnesses here right now, so we are not losing much by it.

By Mr. LYNCH:

Q. Now, Judge, you remember that a few days after that Judge Harlan granted an order in the case?

A. That was on the Saturday after that, after the Sunday he was brought back from Knoxville.

Q. Then on the following Monday the Supreme Court of the United States granted the appeal?

1745 A. Yes, sir.

Q. I will ask you, Judge, if that order of Judge Harlan on Saturday created any great amount of excitement or any apprehension of mob violence here in Chattanooga?

A. Why, with reference to that, Mr. Lynch, I did not know anything about the order of Judge Harlan until Monday morning. I went out of town; I know I was out on Sunday, and I think I went out on Saturday, and did not get into Chattanooga until 10.18 Monday morning, and my first notice of Judge Harlan's action in the matter was through the paper Monday morning. I think that perhaps it was in Sunday's paper; I am not sure about that, but anyway I did not have any information about it. When I came to Chattanooga Monday morning I went direct to the court-house and was holding court during the day.

Q. I will ask you if the publication in the papers on Sunday and Monday—you read the Monday morning paper?

A. I read it Monday morning, whatever I read about it.

Q. I will ask you if that created any anxiety, excitement, or apprehension of mob violence?

A. Not that I know of.

Q. You were holding criminal court on that day?

A. Yes. As I stated, I got there about 10.18, and held court all day.

Q. There were a good many people in your court there; the lawless element was represented in your court?

A. Well, we have some of the lawless element, and some gentlemen who are such as you gentlemen of the bar.

Q. There were witnesses and defendants there?

A. Oh, yes; we had a good crowd.

1746 Q. And jurors and representatives of the people from all classes?

A. Oh, yes.

Q. You usually mix and mingle with the people who attend court, do you not?

A. Quite a good deal; yes, sir. I did not hear any remarks that I call to mind, or anything that I know of that made me apprehend any trouble.

Q. Do you think there was any general apprehension of mob violence, or did you feel any apprehension of mob violence?

A. Oh, no; I did not feel any apprehension.

Mr. SANFORD. I object to that as incompetent.

By Mr. LYNCH:

Q. I will ask you, Judge McReynolds, if you saw or heard anything either from the history of the case or the order of Judge Harlan that caused you to apprehend or believe that Ed Johnson would be lynched or mobbed?

A. Oh, certainly not; not at all.

Mr. SANFORD. I object to the question and the answer as utterly incompetent and entirely irrelevant to the issues in this case.

By Mr. LYNCH:

Q. I will ask you if, in your judgment, from the information which you heard and the state of public feeling as you saw it, mixing as you did in the criminal court with the people, the situation was such as to cause any ordinarily prudent man to apprehend that Johnson was in danger of mob violence?

1747 A. I do not think so. I think I have answered that.

Mr. PENLAND. You have asked it three or four times.

By Mr. LYNCH:

Q. Judge, what time did the court adjourn during that time?

A. I could not state what time court adjourned that day. I know I received a telegram—I think it was somewhere about 11 o'clock; it was while I was holding court—from the clerk of the Supreme Court of the United States, saying that the appeal had been granted and execution stayed, and directing me to notify Attorney-General Whittaker, as I now remember; which I did. He was right there in the court room. Judge Clark also sent his private secretary over there with a telegram which he had received, and that was brought to my attention. About 2 o'clock that afternoon Judge Clark called me up. I left the bench and had some conference with him over the phone with reference to the case. I know he told me, or advised me——

Mr. SANFORD. I object to any conversation with Judge Clark as incompetent.

By Mr. LYNCH:

Q. Go ahead, Judge.

A. (Continuing.) That, having been charged up to the Federal Government, he was a federal prisoner from that date. I thereupon went back to the bench, called for the sheriff and had him come over, and told him "From this date on you hold Johnson as a federal prisoner and charge the expense of keeping him to the Federal Government."

1748 Q. Judge, you adjourned some time in the afternoon, and I suppose went home to supper?

A. I do not know where I went. I do not think I did, because my wife was not here.

Q. You were around town, then?

A. Yes, sir.

Q. Where did you go that evening after supper?

A. That evening I went to Mr. Whittaker's office, which is in the McConnell block, corner of Cherry and 7th.

Q. How long did you stay with Mr. Whittaker?

A. I do not remember exactly the time that I got there, but I know I was at his office some time, perhaps an hour, between 8 and 9 o'clock. The reason I know that is that I was there consulting with Mr. Whittaker about a very important matter, and we were trying to get Mr. Laps Walker and talk the matter over with him.

Q. Who is Mr. Laps Walker?

A. He is editor of the Times.

Q. Or was then?

A. And I remember having called him, I think twice and perhaps a third time, to make an arrangement to meet him; and it was about 9 o'clock when we started up to the Times office to see Mr. Laps Walker.

Q. When was it and under what circumstances that you had your first suspicion or first apprehension that there might be danger of mob violence?

A. We left Mr. Whittaker's office, which is just two blocks or
1749 something like that from the Times office, and went up 7th street somewhere about 9 o'clock or a few minutes afterwards, and reached the corner of 7th and Walnut. Just before we got to the corner of 7th and Walnut, going up on the south side of 7th street, we discovered a crowd of men, something like 10 or 12 men, on the left-hand corner of Walnut and 7th. When I saw them I said to Mr. Whittaker: "That does not look right; I am afraid that means trouble." Before we got to the corner they turned up towards the jail. We turned south towards the Times Building and we met Mr. Martin Fleming just in front of the Christian Church, just about halfway of that block. I stopped Martin and said: "Martin, I saw some ten or twelve men go up towards the jail a while ago, and I am afraid that means trouble. I want you to go up there and see if they are there for that purpose, and if they are I want you to state to those men that that man is a federal prisoner and they had better get away from there or they will get into serious trouble; and I wish you would come back to the Times office, the editorial room, because we are going to be there, and report to us what it means."

Mr. SANFORD. I object to all conversation with Mr. Fleming as hearsay.

Mr. CLIFT. That is a part of the res gestæ.

Mr. SANFORD. I do not think Judge McReynolds' conduct is part of the res gestæ. That is quite a liberal construction, I should say.

The WITNESS. I can just go on and tell you the whole thing, if you want me to.

By Mr. LYNCH:

Q. Go ahead, Judge.

1750 A. We went on to the Times office and there informed them what we had seen. I think before Mr. Fleming got back we tried to get the jail and could get no connection. That led us to believe, of course, that the mob was there and had got the telephone. Mr. Frank Spurlock, Mr. Laps Walker, Mr. Whittaker, and myself were in the editorial room of the Times when Fleming came back. He said: "There are some boys up there trying to create a little trouble, but I have gotten them out of the gate."

Mr. SANFORD. That objection is continued as to the statement made by Mr. Fleming.

The WITNESS. Thereupon I think I said to Mr. Fleming: "You go back and do whatever you can up there and report again." Thereupon Mr. Whittaker called up Captain Shipp. Of course I do not know what went on at the other end, but I know he said: "Captain, do you know what is going on down at the jail?" He said: "You had better get down there at once;" and soon thereafter he said: "Say, he is gone." Thereupon he called for Mr. Frawley, and could not get him. After standing around there a few minutes talking the situation over, Mr. Spurlock said: "Now, I know Captain Shipp very well, and he is liable to rush in there and get killed or kill somebody, and we had better get down there and tell him what we know about the situation, so he can go in there and be cautious about it."

Mr. SANFORD. The objection is continued as to the conversation of Mr. Spurlock with the witness and others, as incompetent and hearsay.

1751 The WITNESS. Must I go on or stop?

Mr. SANFORD. The rule is for you to go ahead.

The WITNESS. Mr. Spurlock suggested that we go down and intercept him, and we started down together. That is what took us out of the editorial room of the Times. When we got down to Georgia avenue Mr. Spurlock said: "I will go up Walnut street"—the street that leads directly by the jail. Mr. Whittaker and myself said we would go up McCallie avenue. I thought that Captain Shipp lived on McCallie avenue at that time. I know he had lived on McCallie avenue, three or four blocks out, just opposite the public-school building. We walked up McCallie avenue something like half a block or more, walking very slowly and watching for him. We came back and did not see him, so we stopped just this side of Dr. Bachman's church, the Presbyterian church up there. I remember we stood in behind the church to some extent and watched the street cars that came down Oak street, to see if he got off there or came down McCallie avenue. We must have stayed there some little time, but did not see him. We finally concluded to go over to the edge of the court-house to see if we could see what was going on at the jail. We went over to the court-house grounds and stayed around there for some time, but could not see anything, and finally I suggested to Mr. Whittaker: "We had better go up in the court-house. There is a

telephone up there in Judge Walker's office, and I can get into his office and we can find out whether the captain is there or not." We then went into the court-house and went to Judge Walker's
1752 office, which is directly across the street from the jail. When we got in there Mr. Whittaker immediately called Captain Shipp, and whoever answered told him that he had gone—I judge from what he told me. He had already gone.

Mr. SANFORD. I object to that as hearsay and incompetent. You are not required to give hearsay testimony unless you are asked to.

The WITNESS. I beg your pardon, Mr. Sanford, but he told me to tell all about it. I will do the very best I can for you.

Anyway, he called Mr. Frawley and I called Mr. Frawley some two or three times, and they gave me to understand that they would have him call us just as soon as he came in. I thereupon called Mr. Frierson, the mayor of the city, and I was informed that he had gone to Dayton. I thereupon called Chief Moseley at his home. He was not there. I called him at police headquarters and was informed that he was in Nashville. I thereupon asked who was the captain in charge, and I think, as I now remember, they said Captain Cass. I could not get hold of him. I remember I told the sergeant what we wanted of him, but I could not get hold of the captain. After this was over Mr. Allen and Mr. Walters——

Mr. SANFORD. I keep up my objection to all these conversations.

Mr. LYNCH. I understand that. You understand, Mr. Attorney-General, you have been inquiring about the question of calling for aid, and we are trying to show now that that is what the criminal judge was doing.

1753 Mr. SANFORD. I have never inquired about what Judge McReynolds has done that I am aware of.

The WITNESS. Perhaps I had better let him ask the questions.

Mr. LYNCH. You are doing pretty well, Judge; better than we could do.

By Mr. LYNCH:

Q. You speak of calling Chief Moseley and learning that he was out of the city, and then trying to get the captain in charge. I will ask you if you had not learned, when the other trouble was up before that, that no one except the chief or the one in charge for him could call out the police?

Mr. SANFORD. I object to that question as leading and suggestive.

By Mr. LYNCH:

Q. Is that true or not?

A. I think the former part of my testimony covers that, when I said that I had gone to the telephone at the time of the other mob and asked the sergeant to send the police up there, and he told me that none but the chief could do it. Then I told him that was the chief's orders.

Q. Then you and Mr. Whittaker talked to Mr. L. G. Walker, the editor of the Chattanooga Times?

A. As we had gone from the Times Building, I thereupon, after calling these other parties, called back to Mr. Laps Walker myself and asked him if he had been able to get anybody. He told me that he had telephoned Tom Wilcox.

Q. What position did Mr. Wilcox hold?

1754 A. He is chairman of this board of public safety, I believe they call it.

Q. I will ask you whether or not that has charge of the police department?

A. Yes, sir. I did not call Mr. Wilcox myself.

Q. I want to ask you right here, before you go on with the detailed story of the lynching, whether or not you have been a constant reader of the Chattanooga Times for many years?

A. Yes, sir.

Q. I will ask you whether or not you know Mr. Walker well—the editor of the Times?

A. I do.

Q. I will ask you, Judge, whether or not the Chattanooga Times has been a very bitter opponent of lynching for years?

A. I judge so.

Q. In fact, has not that been the tenor of its editorials?

A. Yes, sir; I so judge.

Q. I will ask you whether or not that has been Mr. Walker's record, as a very strong opponent of lynching, here and elsewhere?

A. Yes, sir.

Q. And he was the gentleman you were in communication with that night?

A. Yes, sir. My main reason, though, for communicating with him was because he knew of the mission we had gone out on, and I called back to see what he was doing.

1755 Q. And you were with him when you did the first telephoning to Captain Shipp?

A. Yes, sir.

Q. Now just go ahead from where you left off, Judge, about Mr. Allen and Mr. Walters.

A. Mr. Allen and Mr. Walters, the janitor, came into the court-house while we were there, and I said to Mr. Allen: "You go on over to the jail; you are a constable." He hung back a little, and finally I said: "I don't guess they will hurt you. You go over there and see the conditions and come back here and tell us what they are." Then I turned around to Mr. Walters and said: "Mr. Walters, I wish you would go with him." They went off, and I never saw anything more of them. We had tried to look out of the windows to see what we could, but we could not hear a noise over there. We could see sometimes a man going in or coming out, but we could not see nor hear what was going on. I did see, I think, just before they brought him out of there, some five or six men, I judge, standing on the opposite side of the street towards the jail. Somewhere about 10 o'clock I

called up Mr. Pemberton and asked him to come down there, and when he got there Mr. Whittaker did the talking, and said: "Jim, I want you to go over to the jail and interview Captain Shipp personally. See what assistance he needs and come back here and report to us at once." Mr. Whittaker is the only one that spoke to him with reference to what we wanted him to do. He went over and instantly came back and reported "they are bringing him out," and said he was going to the bridge. I told him to come back, and he answered
1756 me in a rather—well, he said he was not going to do it, and went off.

Q. Where did you and Mr. Whittaker go then?

A. After we saw them come out of the jail—there were something like 50 or 75 people; I could not tell anything about who was in the lynching, but I saw the crowd of people—we went on across the street, and I think they were out of our sight when we came across the street. I do not remember having seen them except when I was looking out of the window. We got over there, and Captain Shipp was upstairs picking up a gun, the first I saw of him. I immediately inquired of him as to whether he was hurt or not, or something to that effect, and what they did to him. Mr. Jerry Gibson was in the office part in his shirt sleeves, and the perspiration was just rolling off of him.

Q. I will ask you right there whether that was a warm night or a cold night?

A. It was a cold night.

Q. I will ask you whether or not Mr. Gibson appeared excited?

A. I should judge he was excited from his coat being off and the perspiration rolling off of him as it was. Captain Shipp had——

Q. Tell us how Captain Shipp appeared.

A. He had a kind of subdued look when I saw him. That is the appearance he gave.

Q. Where was the mob at that time?

A. What time?

Q. The time you and Mr. Whittaker found Captain Shipp.

1757 A. I do not remember having seen the mob after we left the court-house window. You see we had to leave the front court-house window, go clear back through the court room, go downstairs, go out the side door, and then around the building. As I remember it, they were gone over the hill. Anyway, I do not remember having seen them after that.

Q. Was there anything that you could see that Captain Shipp could do about helping the prisoner, in view of the conditions at that time?

Mr. SANFORD. I object to the opinion of the witness on that point.

Mr. LYNCH. He can state the conditions.

Mr. SANFORD. You did not ask him that.

Mr. CLIFT. Yes, he did. He asked him about the conditions there.

By Mr. LYNCH:

Q. State what it was that you saw that he could do.

A. I have thought of it a good deal. Unless he had had some of his officers there, I do not see what good he could have done. I think it is an absurd idea to talk about summoning people to go there at that time after that mob.

Q. How long have you known Captain Shipp?

A. Oh, I have known Captain Shipp since before I came to Chattanooga—about 14 or 15 years, I guess.

Q. Do you think you know his general character?

A. Yes, sir.

Q. Is it good or bad?

A. Splendid.

1758 Q. From that general character would you believe him on his oath?

A. I certainly would.

Q. How about his general character for peace and good order?

A. It is good.

Mr. SANFORD. That objection, of course, is continued.

Mr. LYNCH. Yes, I understand that.

By Mr. LYNCH:

Q. Do you know the defendant, Matt Galloway?

A. Yes.

Q. Do you know his general character?

A. I judge so.

Q. Is that good or bad?

A. Good.

Q. From that general character would you believe him on his oath?

A. Yes, sir; I would.

Q. What about his general character for peace and good order?

A. Why, that is good. I have had some complaints against Matt, but I never found anything in them; that is, from the investigations I made.

Q. I will ask you if you know the defendant, Joe Clark?

A. Yes; I know Joe Clark.

Q. Do you think you know his general character?

A. I think I do.

Q. Is it good or bad?

A. It is good.

1759 Q. I will ask you if you know the defendants, Gibson, Frawley, Baker, and Brown?

A. I know all of them. My knowledge of Mr. Gibson is not so much as of the other gentlemen because Mr. Gibson was night jailer over there; and while I never heard anything wrong about him, I can speak better about the other gentlemen because I have come in contact with them.

Q. Do you think you know enough about Mr. Gibson to speak as to his general character?

A. I think so. I think I know what the majority of his neighbors would say about him if they were called upon.

Q. Is it good or bad?

A. I think it is good.

Q. From that general character would you believe him on his oath?

A. I would believe any of those gentlemen.

Q. Do you think the characters of these other gentlemen are good or bad?

A. Splendid.

Q. Would you believe them on their oaths?

A. I would believe all of them.

Q. I will ask you whether or not Mr. Gibson is an old man?

A. Yes, sir.

Q. A feeble old man?

A. I do not know how feeble he is. He is old enough to be feeble.

Q. Do you know about how old he is, Judge?

1760 A. No, I do not. I have heard the question asked before up here. I think some one guessed he was about 55 or 60. Sixty, I should judge.

Q. As Joe Franklin would say, they "flattered" him.

A. I would judge he is 60 or more; but that is merely a guess.

Q. I will ask you if you charged the grand jury after that, and if you did not have your grand jury investigate this lynching?

A. I certainly did; and I gave my grand jury the name of every party that I had any information was at that lynching that night. I delivered a pretty strenuous charge to them.

Q. Have you that charge?

A. Yes; I have a copy of it.

Q. I have not seen it, but I believe I would like to ask you to put it in the record.

A. I brought it over here.

Mr. SANFORD. I object to that as not even prima facie competent.

Mr. CHAMLEE. Just hand it to the stenographer and let him copy it in the record.

The WITNESS. There were two charges. The first charge in regard to mob violence was on Saturday, January 27th. This last one was on May 14th, after this lynching had occurred.

Mr. SANFORD. I object to that as utterly and entirely incompetent, and not even remotely connected with this case.

Mr. LYNCH. You say you object to the charge going in?

1761 Mr. SANFORD. Why, it takes time, and it has got to be printed, and it fills up the record and has nothing whatever to do with this lawsuit, and I do object on that ground.

Mr. LYNCH. All right. Let me see it.

(The paper is handed to Mr. Lynch.)

Mr. SANFORD. You might as well introduce the history of Tennessee as to introduce that charge.

The above-mentioned paper is marked Exhibit McReynolds No. 1, and is in the words and figures following, to wit:

(Ex. McREYNOLDS No. 1.)

Copy of charge given grand jury to investigate lynching.

There was an unfortunate incident which occurred in this county since the last term of the court to which it is the duty of the court to call your attention, and it is your sworn duty as jurors to make a thorough and complete investigation of the same and to return indictments against all parties in anyway connected with the same. What I refer to is the mob that went to the Hamilton County jail and took therefrom a party and lynched him on the county bridge.

All parties connected with this mob in any way are guilty under the law of murder and those parties present aiding and abetting or ready and willing to aid and abet are guilty as principals.

They are also guilty of conspiracy—conspiring together to take life, which is punishable in the penitentiary for not less than
1762 three nor more than twenty-one years. They are also guilty of defacing public property.

Some six weeks prior to the time of the successful entrance to the jail an effort was made by another mob to storm said jail and take the life of certain parties. At that time the jail doors were battered down, rocks were thrown through the windows, pistols were fired, and innocent bystanders were injured. The court has heretofore called the attention of the grand jury to this matter, but conditions were not propitious at the time for a complete investigation. I now instruct you to take this matter up also and to make a complete and thorough investigation of the same and indict every party in any way connected with the same.

The parties engaged in this first mob were guilty of conspiracy, which is a penitentiary offense, as well of destruction of personal property. If you are able to obtain the names of the parties engaged in this mob and no one will agree to become prosecutor, it is then your duty to make a report of the same to the court and thereupon the court will make an order directing the attorney-general to prosecute officially.

It has been charged that the officials were derelict in their duty. If this be true it is then your duty to indict them and if it is not true they are entitled to vindication at your hands from such a slanderous charge.

Issue subpoenas for all witnesses you may need for this investigation and have them summoned. If they fail to appear report the same to the court and the court will order attachments and punish them for failing to attend.

1763 Now, gentlemen of the jury, it was my sworn duty to give you these matters in charge and it is your sworn duty to make the investigation and indict every man in any way connected therewith. Let the investigation be thorough and complete and do your duty as jurors.

By Mr. LYNCH:

Q. Now, Judge, were any indictments found by the grand jury?

A. No, sir.

Q. After an investigation of that affair did your grand jury make any complaint against Captain Shipp?

A. No.

Mr. SANFORD. I object to that as an utterly incompetent question calling for incompetent matter.

By Mr. LYNCH:

Q. Or any of his deputies; any of these defendants?

A. No, sir.

Cross-examination by Mr. SANFORD:

Q. That same grand jury was not able to get any indictment against anybody for all these matters, was it?

A. No, sir.

Q. They did not indict anybody for that first attempt at lynching?

A. No, sir.

Q. And did not indict anybody for the second?

1764 A. No, sir.

Q. Do you know whether they had Mr. Chivington on the stand the second time?

A. I understand they did.

Q. Do you know whether they summoned him or not?

A. I think they did.

Q. Do you know?

A. No, I would not know myself.

Q. That is what I asked.

A. I know I gave the attorney-general Mr. Chivington's name, and I have the report from the foreman of the grand jury stating that he had Mr. Chivington before him.

Q. Did you know that Mr. Chivington then had the names of 36 people and 11 lynchers?

A. No, sir; I did not.

Q. How does it happen that they did not have any indictments, if that is true; if they asked him about that?

A. I do not know what they asked him.

Q. I was asking you hypothetically.

A. Why, I do not think there is any question but what they would have indicted them if they had had information.

Q. They did not indict anybody, though; that is true?

A. No, sir.

Q. How long were you over at the court-house, Judge, to the best of your recollection?

A. I judge I must have been there about half an hour or 35 minutes; because we went along there, going up to the Times Building, about 9 or 9.05, and we must have stayed somewhere—I judge it was about 9.25 or along there when we left with Mr. Spurlock, and
1765 I judge we were out on the street 15 or 20 minutes before we determined to go to the court-house.

Q. What time did the lynchers leave?

A. Just about 10.15 or 10.20.

Q. To the best of your recollection?

A. Yes, sir; and I think my recollection is good.

Q. You have been interested in this proceeding, Judge McReynolds?

A. No, sir; I have been interested to some extent where I have been connected with it, and I have been interested in some of my officers, because I thought they were not——

Q. You were here while Attorney-General Whittaker was being examined?

A. Yes, sir.

Q. And you suggested various questions to counsel?

A. Yes, sir; I did—matters I remembered and that I knew Mr. Whittaker would remember when he was asked about them.

Q. What people did you recognize in that first mob?

A. I did not recognize anybody. I tried as hard as anyone you ever saw to get hold of those people, too.

Q. Did you know Bart Justice?

A. I know Bart Justice, but I do not remember having seen him there that night. I understood he was there.

Q. Was he one of that committee that went through the jail?

A. I had gone away from the jail when that committee went through.

Q. You do not know about that?

1766 A. No, sir; I just understood they went through there, but I was not there. They were wanting a committee of ten while I was there, and I was refusing to let a committee of ten go through. We did not propose to turn the jail over to them.

Q. Judge, it was on account of the public excitement that you felt it advisable to have this quite speedy indictment and quick trial, was it not?

A. Why, yes; it was to a great extent.

Q. It was an unusually speedy trial for such a serious offense, was it not?

A. Why, that is the only offense of that character that I have ever had in my circuit since I have been judge. It is not an unusually speedy trial for criminals in this circuit. I have tried a great many men much quicker than that and sent them to the penitentiary. I had one man arrested one day, indicted the next day, and sent to the penitentiary the next, as I now remember it. Of course, we could not have done that, but they waived the indictment.

Q. But in this particular case Mr. Thomas asked for more time, did he not, on the ground that they had not had time to prepare, and you overruled that application on the ground that your idea was that it was desirable to have a quick trial?

A. No, sir. Mr. Thomas never made application that way. Mr. Thomas got up at the starting of that trial—the attorneys had agreed on a time with the attorney-general when he was to be brought back here; and Mr. Thomas got up and said: "I do not think this is
1767 the proper place to try him; I do not think now is the proper time to try him," &c. When he got through I said to him: "Mr. Thomas, if you want this court to pass on a change of venue or if you want this court to hear an application for continuance you will have to make your motion. There is nothing before the court, and if you do not make your application, of course you have got to go into the trial."

Q. And he did not make any motion for continuance?

A. No, sir; he just put it up to the court.

Q. And you thought it was desirable to have a speedy trial?

A. I did.

Q. Is it not a fact that in all cases of that sort the great danger of mob violence is on account of delay?

A. There is no question but what it adds to the spirit of mob violence.

Q. Every time that is true, is it not?

A. I do not think there is any question but what delay will encourage mob violence. That is my opinion of it. It is not responsible for all mob violence, but there is no question but what delay——

Q. Was there any reason for any further excitement or any attempt at lynching after Johnson had been convicted and sentenced to be hung, and the attorneys had decided not to appeal?

A. As I said, the excitement died out during the trial, and I thought he was perfectly safe.

1768 Q. His attorneys did not think so, did they? You saw the statement of Mr. Thomas published in the paper, did you not?

A. Yes, sir.

Q. And you heard that quotation read from him this morning?

A. Yes, sir.

Q. And that was his public statement. One was that they thought there was no error, and another was on account of the fact that they thought he would be lynched if——

A. Yes, I remember having read that part of Mr. Thomas's statement; and I remember further that Mr. Brown advised him——

Q. I do not ask for that, Judge McReynolds. I am asking you if you remember his article in the Times?

A. I remember his article. That was not what he said to me, though.

Q. I did not ask you that. I am asking about the newspaper article, not about the motion in open court.

A. The only reason I volunteered that statement is that I do not want to be put in that attitude.

Q. You misunderstand me. I am not asking you about the motion in open court or the reason stated in court, but I am asking about the article that appeared in the paper the next morning.

A. I do not know when it appeared, but I know there was an article, because I have read it.

Q. And of course there was no apprehension that Johnson would be lynched in Chattanooga after Sheriff Shipp had taken him to Knoxville, and while he was still in Knoxville?

1769 A. No, sir; and I did not have any apprehension of a lynching if he had stayed in Chattanooga.

Q. I did not ask you that.

A. I beg your pardon.

Q. The sheriff did take him to Knoxville?

A. Yes, sir.

Q. And he did not bring him back until one week before he was lynched?

A. He brought him back on Sunday morning and he was lynched the next Monday night week.

Q. And, of course, there was no apprehension that he would be lynched in Chattanooga during that time?

A. No, sir.

Q. If he was to be lynched at all, he would have been lynched at Knoxville, during that time, because he was not in Chattanooga?

A. No, sir.

Q. Now, Judge, do you not think that when it was known that the Supreme Court had granted an appeal and that there would be a delay, with the possibility of a new trial, perhaps, or the writ of habeas corpus being sustained, that that would have an effect to increase the danger of a lynching and to excite the lawless element of the community?

A. Well, that might have an effect to increase it, but I did not think there was any increase sufficient to cause apprehension.

Q. I am asking you if you do not think it would tend to increase it.

1770 A. There is no question about that, if it was known by the public and they thought it was to be delayed.

Q. Was it not known Monday in the town? You knew it?

A. I knew it Monday morning, but as to whether the public knew what that meant I do not know.

Q. Did not the newspaper accounts explain what that meant?

A. I would not say that any of them knew how long the delay would be.

Q. They knew it meant a delay to take an appeal to the Supreme Court?

A. I presume they all knew that meant some delay.

Q. And that there was a possibility of the Supreme Court reversing the action of the court below and discharging the prisoner?

A. I do not know whether everybody knew that or not.

Q. That would be natural, would it not?

A. That would be natural for a man who knew anything about the conditions.

Q. They knew that Ed Johnson's lawyers had taken his case there to save his neck?

A. I judge they did if they found it out from the papers.

Q. Do you remember reading the Chattanooga News of that afternoon?

A. I do not remember having read the Chattanooga News that afternoon, Mr. Sanford.

Q. Do you remember reading this editorial in the Chattanooga News, entitled "The Johnson Case Again," the last paragraph of which reads this way:

1771 "All of this delay is aggravating to the community. The people of Chattanooga believe that Johnson is guilty, and that he ought to suffer the penalty of the law as speedily as possible. If by legal technicality the case is prolonged and the culprit finally escapes, there will be no use to plead with a mob here if another such crime is committed. Such delays are largely responsible for mob violence all over the country."

Do you remember that editorial?

A. No; I do not remember that. I might have read it.

Q. What time does the News come out; about 3 or 4 in the afternoon?

A. I judge about 4 o'clock.

Q. It has a wide circulation?

A. Yes, sir; it has a wide circulation.

Q. And the Times in the morning has a wide circulation?

A. Yes, sir.

Q. I will not ask which has the biggest, but they are both widely circulated papers?

A. Yes, sir.

Q. And very generally read?

A. Yes, sir.

Q. Now, Judge, you appointed three lawyers to defend Johnson?

A. Yes, sir.

Q. And then you appointed three other advisers at the request of Mr. Thomas?

A. Yes, sir.

1772 Q. They were all white lawyers of the highest standing, were they not?

A. Yes, sir.

Q. And they had decided not to appeal?

A. Yes, sir.

Q. Now, is it not a fact that it was an additional aggravation, especially to the lawless element of the community, after it was known that an appeal had been taken by two negro lawyers, and that the case was being delayed by two negro lawyers?

A. I do not know that I can say about that. I never heard of anything.

Q. This matter had made a good deal of race feeling, had it not?

A. Oh, the race feeling was the day after the mob.

Q. It had intensified that condition of affairs?

A. Why, I do not know about that, because I did not hear that discussed.

Q. From what you know of that situation, would not that be true?

A. I could not say; but I would say this: You see, after the case was not appealed, if you will allow me to explain—I was [illegible]om here in February. That case was heard in Knoxville, a[illegible]d carried it to the Supreme Court of the State while I was a[illegible]ney had applied to the Supreme Court of the State, and I did [illegible]know anything about the conditions here at that time.

Q. They asked for a new trial when it was too late, and that
1773 had been dismissed. There was no motion for a new trial within the proper time?

A. No, sir.

Q. Of course I am not inquiring about the correctness of the original judgment. That is not a matter in issue in this case. But from what you know of the feeling at that time, it brought up the race question, did it not?

A. This crime, of course; yes, sir.

Q. And would not the indignation of the lawless element at any delay be intensified by the fact that it was two negro lawyers who had taken this case to the Supreme Court?

A. Why, Mr. Sanford, I think it was generally understood that it was a white lawyer that did that, instead of two negro lawyers.

Q. You think it was?

A. Yes, sir.

Q. Has anybody appeared on the record except these two negro lawyers, Parden and Hutchins?

A. Not on the record; but it was generally understood here, and the talk that I heard was against a white lawyer that they claim drew these petitions, &c. That is all the talk I ever heard.

Q. And that caused feeling?

A. Well, there was some talk about him.

Q. Now, do you not think, taking all those things together, that the fact that the Supreme Court did grant an appeal made a very material risk of lynching by the lawless element of the community?

A. I did not think so at the time, Mr. Sanford. I did not apprehend any danger at that time at all—not a bit.

1774 Q. You did not think that the fact that there was to be an appeal and a delay, together with the public spirit as represented by the editorial I have just read to you, indicated that the state of the public mind was such as to arouse apprehension of a lynching?

A. No, sir; I did not, because I did not think the people really appreciated the situation; and even the lawyers did not know when we would get loose from up there.

Q. Your idea is that the people did not understand that the action of the Supreme Court meant delay; is that it?

A. Well, no; only that we did not know anything about it. None of us would know that. Myself, I did not expect it would be delayed but a short time, because I thought it would be dismissed.

Q. Then you are basing it more on your own opinion than on what the general public thought about it?

A. Well, I expect I am basing it more on my own opinion, because I do not know that I discussed it to any great extent that day. I was in the court room all day.

Q. You were busy in court all that day?

A. Yes, sir.

Q. And you did not get around and discuss it generally that day?

A. Not that I remember.

Q. Do you remember what case you were trying?

A. No, sir; I do not. I expect we were trying no particular case. I expect we were on several cases.

Q. You have no affirmative recollection as to how that was?

1775 A. No, sir—only my custom in that adjourned session.

Q. Now, of course, when the question came up before Judge Clark, the question of the danger of lynching was not brought up and had nothing to do with any issue before Judge Clark, did it?

A. No, sir.

Q. There was no occasion for anything of that sort?

A. No, sir.

Q. It was just a question of law to him?

A. Yes, sir.

Q. And presented to him as a question of law?

A. Yes, sir; that was the way. I was merely a witness in the case.

Q. That question was not discussed; it had no relevancy?

A. I never heard anything said about it.

Q. You did not hear of Judge Harlan's order on Saturday? It was not known until Monday?

A. I could not say what was known in Chattanooga. As I said a while ago, I went out of town, and I do not think I knew anything about it until Monday morning.

Q. When you got your telegram did you show that to Sheriff Shipp, or just tell him about it?

A. I do not know. I know I showed it to Mr. Whittaker, but I have no affirmative recollection as to what I said to Captain Shipp. I presume I did explain it to him.

Q. He knew from you that the Supreme Court had granted

1776 a stay of execution?

A. Oh, yes. I told him that afternoon that he must charge that man to the Federal Government.

Q. That situation was explained to him to that extent?

A. Yes.

Q. He knew that the reason for that was that the Supreme Court had granted a stay of execution?

A. Why, certainly.

Q. From your conversation with him?

A. Yes, sir; I judge he did.

Q. Do you remember how many men you saw with guns the night of the first attempt at lynching? Did you say you saw five men with guns?

A. I said I thought there were five left in there. I saw several guns.

Q. But you did not recognize any of those men?

A. No; I did not. I tried mighty hard to find out, too.

Q. Did you recognize anybody the night of the actual lynching?

A. No, sir. We could not tell who those people were coming out. We were across the street in the court-house, upstairs, looking out. We could not tell who they were.

Q. You were 150 feet or so away, were you?

A. Well, I should judge we were. When they came into the street they would hardly be more than a hundred feet then.

Q. Did any of them have guns; do you remember?

A. I do not remember seeing any guns.

1777 Q. How many were there in the little bunch that had hold of Johnson, that were around him?

A. I could not tell. It looked to me as if there was a man on either side of Johnson, but I could not tell how many composed the crowd that was taking him. As I saw them, they were all around him.

Q. Had you any way of ascertaining how many there were?

A. No, sir. All I could say is that I thought there were about fifty in that crowd that went on up the street.

Q. Were they separated from the others?

A. Not when I saw them. That was when they came out into the street.

Q. Had there not been bystanders in the street, looking on?

A. I remember seeing, say, four or five men, or something like that, on the far side of the street from us. I saw some men passing on the street, going right along Walnut street—evidently going on.

Q. Now, Judge, before the lynchers took out Ed Johnson that night, did you go over to the jail at all yourself?

A. Before they took him out? No, sir.

Q. Did Attorney-General Whittaker?

A. No, sir; we did not go there.

Q. Did either of you send down to police headquarters and call for policemen?

A. No. I telephoned there.

Q. You telephoned there and you found the chief was out?

A. I telephoned there, and to his residence, both.

1778 Q. Did you go down or send down?

A. No; I kept telephoning to other places.

Q. But you did not send to the police station?

A. No, sir.

Q. How far was that from where you were?

A. Well, if we had gone from the Times Building, that is not over two blocks from the Times Building.

Q. After you were at the court-house, and knew something was going on—you did know something was going on?

A. Yes, sir.

Q. Did you go down to the police station and try to get the police?

A. Oh, no. The only thing I did, as I say, was just to telephone

Q. Did you make any further effort than what you have already stated?

A. I think I have told you all that I did—all that I remember.

Q. Did you make any effort to go after that mob, or appeal to them in any way?

A. No, sir. My former experience with a mob had been such that I made up my mind that my duties as judge were different from those of sheriff.

Q. You did not feel any duty devolving upon you?

A. No, sir.

Q. And you acted on that theory as to what your duty was?

1779 A. That is just what I acted on. It would have been useless for a person to have gone there. You see I had charged the grand jury very vigorously about these lynchers.

Q. That had not done much good, had it?

A. That had not done a bit of good; and I did not know what their feeling was towards me.

Q. How far is the court-house from the center of the city?

A. Well, it depends on where the center of the city is. If you take the News' version of it, it would be six or eight blocks. I do not know what the Times would say about it.

Q. Is it in the midst of a populous neighborhood?

A. Yes, sir.

Q. There are houses all around?

A. Yes, sir.

Q. It is two blocks from Market street, is it?

A. It is three blocks.

Q. Two, is it not?

A. Two; yes, sir, if you go right straight through. But, Mr. Sanford, it would have been silly to have called a crowd up there that night, unless you could get hold of officers. In the case of that former mob, if the good citizens, a great many of them, had not been standing around we could have handled the mob much easier, because they were in the way.

Q. Did the good citizens get in the way that night? Did

1780 you make any effort to see what were the good citizens and what were the bad ones?

A. That last night? Oh, I never saw those; no. But a great many that first night were good hands to make speeches, but when it came to taking hold they did not take hold very well.

Q. I am asking you about the second night; whether you made any effort to ascertain who the good citizens were?

A. No, sir; I have told you exactly how that was.

Q. And you did not follow after them at all?

A. No, sir; I did not. I thought it would have been nonsense to do it.

Q. Did Sheriff Shipp follow after them?

A. He did not while I was there.

Q. You did not see any more acts of violence on Sheriff Shipp, did you?

A. No, sir; I did not.

Q. He had not been hurt?

A. No; he said he had not.

Q. When you were there at Knoxville did a colored preacher at that place—I don't know whether of that place or at that place—come to Sheriff Shipp in your presence and ask him not to bring Ed. Johnson back to Chattanooga?

A. I do not know whether he did or not. I know Fleming was talking to me something about that, but while he was talking to me he was trying to explain his connection with the case.

Q. Did he say anything to the sheriff in your presence?

1781 A. I do not remember his saying anything to the sheriff in my presence.

Q. You do not remember his asking the sheriff in your presence not to take Ed. Johnson back to Chattanooga?

A. No, sir; I do not. The sheriff was with me when the preacher was there. Sheriff Shipp, Mr. Whittaker, and myself, and, perhaps, Judge Shepherd, were in Judge Clark's office about 2 o'clock Sunday morning, and Hutchins and Parden and the negro preacher were there, and the negro preacher was talking to me about something. I do not think he was talking about bringing him back; and if he said anything to Captain Shipp I do not remember. I would not say he did not and I would not say he did.

Q. You do not recollect what the conversation was?

A. No, sir; I do not.

Redirect examination by Mr. LYNCH:

Q. Judge McReynolds, I will ask you whether or not this girl, upon whom this assault was said to have been made by Ed. Johnson, had relatives here in this county?

A. Her father, I guess, is out here.

Q. I mean by that, is it a local family?

A. No; I understand he is a northern gentleman—a federal soldier, who had been in charge of the park, the cemetery.

Q. In charge of the National Cemetery?

1782 A. Yes, sir.

Mr. COOKE. Forest Hill.

The WITNESS. The Forest Hill Cemetery, I mean.

By Mr. LYNCH:

Q. I will ask you whether or not they had only lived out there a short while?

A. I do not know a thing about that. I did not know them; never saw them before that I know of until the day of the trial.

Q. You do not know whether they had lived there long enough to have local friends or relatives?

A. I do not know a thing about that.

Q. Relatives who would take any special interest in their case above that of any ordinary citizen?

A. No, sir; I do not know anything about it.

Q. Now, Judge, they were discussing the causes of mobs, and the question of delay causing mobs. I will ask you if, at the time of the first attempt to lynch the prisoner, there had been any delay then to cause the mob spirit?

A. No; certainly not. I answered Mr. Sanford's question as a general proposition, as I understood it.

Q. Yes; but I am applying it to this.

A. Certainly not, at that time. The man had just been arrested.

Q. I will ask you whether or not, as a criminal judge and as
1783 a practicing lawyer, you have watched and know something of the causes and the result of mobs?

A. I never had but this one mob, and I do not know whether I am qualified as an expert or not, Mr. Lynch.

Q. You have tried other people in your circuit where there have been attempts to mob?

A. Yes, sir; I have tried other men. I believe we indicted those people on Monday and they were tried the next week, and three men were hung.

Q. I will ask you whether or not this is true: That mobs are spasmodic, and usually carry out their plans as a *a* result of the first wave of indignation, if they do at all?

Mr. SANFORD. I object to that question as leading.

A. Of course the witness has not qualified as an expert.

Mr. LYNCH. I am just calling for an opinion.

The WITNESS. Well, Mr. Lynch, I do not know about that.

By Mr. LYNCH:

Q. I will ask you if you have known, up until this case, any case where a mob had executed a prisoner after he had been tried. Did you ever know of such a case in your circuit?

A. No; I have not known of any such case in my circuit, and my general knowledge about the matter is that a mob, if it occurs at all, occurs immediately after the crime was committed, and if time intervenes the people quiet down, ready for the law to take its
1784 course, just as I thought it had in this case. It seems I was mistaken.

Q. I will ask you whether or not it usually the abhorrence and indignation that people feel immediately upon learning of an awful crim in their community.

Mr. SANFORD. I object to the question as leading.

A. I have never been engaged in a mob, and do not know just how they feel, Mr. Lynch. From observation it looks that way.

By Mr. LYNCH:

Q. I am examining you on that on account of the fact that the attorney-general asked you about the causes of mobs. You were asked about Mr. Thomas' reasons for not appealing. I wish you would state all you know about the reasons given by counsel and all the counsel for the defendant for not appealing this case.

Mr. SANFORD. I object to any statement made by counsel, unless it was made public, so that the public knew what it was. Any private conversations we object to as entirely incompetent and irrelevant.

Mr. LYNCH. Our position is that the reasons given to Judge McReynolds would be just as important to this court as those given to other people.

Mr. SANFORD. They would not throw any light on the public mind. It is not a question of fact; it is just a question of the public mind.

A. Mr. Thomas came to me and said that the question of going over this bill of exceptions and the question of
1785 appeal was a pretty strong responsibility to have, and he would like me to appoint three other lawyers to assist him and advise with him. At first I rather hesitated about it, because I thought at the beginning of the trial that he had tried to throw the responsibility on me by merely making a statement and then leaving me to determine the matter. But he said he would consider it a personal matter, if I would do it, and I said: "Well, I will appoint any three reputable lawyers." Thereupon I appointed Mr. Brown, Mr. Pritchard, and Mr. Cantrell—without ever having talked to either one of them in reference to the case, of course. Mr. Thomas requested me to notify them to meet at Mr. Cantrell's office at 1.30 that day, Friday, February 9th. I did so, and they came to my office at about 3 o'clock; and I think in that same article that he wrote he said they had been in conference about it an hour and a half. I know he told me that they had concluded there was no reason to appeal, that there was no error in the bill of exceptions, and one of the best juries, a fine jury, had convicted him, and if the court concurred he had nothing further to say, or words to that effect.

By Mr. LYNCH:

Q. That is what Mr. Thomas said?

A. Yes; he said something to that effect when he came before me when I sentenced Johnson.

Q. Did Mr. Brown or any other gentleman express any
1786 reason why they had decided not to appeal?

A. No. Mr. Thomas is the only one that did any talking about it.

Mr. SANFORD. I keep up the objection as to private conversations.

The WITNESS. Mr. Thomas made some such statement as that before I sentenced Johnson. I believe that is exactly what he said, or something to that effect.

Recross-examination by Mr. SANFORD:

Q. This is the first experience you have had with a mob, you say?

A. My first experience, except that I saw one at one time.

Q. And the other case, where three men were tried and hung in a few days?

A. They were not hung.

Q. They were sentenced, I mean, in a few days?

A. Yes, sir.

Q. And the reason for that promptness in those trials, in cases of great excitement, is to avoid that delay, is it not, and to let the public feel that prompt action is going to be taken?

A. Of course we want to avoid delay. I think another reason is because delay is one of the best defenses a guilty criminal has got.

Q. It is to make the public feel that there is going
1787 to be prompt action taken by the authorities?

A. In that case in Franklin County, there was a longer time intervening between the time the crime was committed and the indictment; but they were tried the next week, and then their case was appealed to the Supreme Court at the September term, and they were hung the next March, or somewhere along there.

Q. That had been some time since the crime was committed?

A. Yes, sir.

By Mr. LYNCH:

Q. I will ask you if that case where the three men were hanged in Franklin County was for burning a woman and killing a man?

A. Yes, sir; killing a man and a woman and burning her up.

Q. I will ask you whether in that case there was any further attempt to lynch the prisoners after they were tried and convicted, even though the case was appealed and delayed almost a year?

A. No, sir; they were kept over there in jail. There was no further attempt after the first trial; and it was from similar observation that I had made that I felt that this was safe here.

By Mr. SANFORD:

1788 Q. Your opinion was based largely on your experience in that other case.

A. Some experience, and then my general knowledge of the situation here.

Q. I say, it was based largely on that?

A. No; I did not say that; I said some.

Q. I will ask you whether it is not based largely on that?

A. No, sir; I will say no.

Q. That was a small town, was it not? Of course Franklin is a large town, but not as big as Chattanooga.

A. No, not as big as Chattanooga, but they are mighty big for their size over there.

Q. It is not nearly as large as Chattanooga?

A. No, sir.

Q. They have not the same element to deal with; they have not the same conditions at all?

A. No, sir.

By Mr. LYNCH:

Q. That reminds me of another question. I will ask you, Judge, whether or not this is a manufacturing town?

A. Yes, sir.

Q. I will ask you to give us a statement about the character of the population here—whether or not there are people here from all cities and countries?

A. I think so.

Q. It is a cosmopolitan population?

1789 A. Yes, sir.

Q. There are northern, eastern, western, and southern people here?

A. Yes, sir; I judge so.

Q. And I will ask you whether or not there is a very large colored population here?

A. Yes, sir.

Q. I will ask you whether or not there is a large colored vote here?

A. Quite a good many of them.

Q. Judge, I will ask you whether or not there is a large independent political element here—a large element that is independent in politics?

A. Yes.

Mr. SANFORD. I object to that question as entirely incompetent.

By Mr. LYNCH:

Q. There has been an intimation that Captain Shipp's conduct had some political significance, and that he was bidding for votes on account of this affair. I want to ask you whether or not this large colored vote here is frequently divided between the two political parties?

A. I expect some of them vote one way and some another. Most of them vote the Republican ticket.

Q. Yes; but I will ask you whether or not frequently the Democratic candidate does not get a good many of those votes?

1790 A. Yes; the Democratic candidate sometimes gets some votes. I do not think Captain Shipp got many of them.

Q. You mean in the last race?

A. Yes.

Q. That is the very question I wanted to ask you about—whether or not that large vote exists here?

A. It is quite a large vote.

Q. I will ask you whether or not it is true that the two political parties are rather evenly divided in this county, and whether or not some of our officials here are always Democrats and others always Republican?

A. That is true.

Q. And I will ask you whether or not, at almost every county election, some Democrats and some Republicans are elected at the same date?

A. Yes, sir; the county is considered about evenly divided, and at county elections we generally or invariably have partly Democratic and partly Republican county officers.

Q. I will ask you whether or not this colored vote is a vote to be reckoned with in these elections?

A. There is no question about that.

Mr. CHAMLEE. Now we want to introduce some proof as to the case against Charlie Baker. I will take Mr. Glenn as the first witness.

1791 Mr. SANFORD. Is he just a character witness?

Mr. CHAMLEE. Yes.

* * * * * * *

1792 (After conference):

Mr. LYNCH. We would like to have the hearing go over until morning. The weather is so bad that the people are not here whom we expected to be here.

(Thereupon, at 4.25 o'clock p. m., the hearing was adjourned until Tuesday, June 25, 1907, at 9 o'clock a. m.)

1793 CHATTANOOGA, TENN.,
June 25, 1907.

The hearing was resumed at 9 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland; and counsel for the various defendants.

Rev. J. W. BACHMAN, a witness produced on behalf of the defendants, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Doctor, where do you reside?

A. On McCallie avenue.

Q. In this city?

A. Yes, sir; 221 McCallie.

Q. How long have you been a resident of Chattanooga?

A. It is almost 34 years.

Q. What is your profession?

A. Minister.

Q. Of what church?

A. The First Presbyterian Church.

Q. How long have you been the minister in charge of that church?

A. It will be 34 years in October.

Q. Where is that church situated?

1794 A. It is now situated on the corner of Georgia avenue and 7th street.

Q. How long has that church been at that place?

A. I believe it has been there about 24 years; 23 or 24 years.

Q. During all that period you have been the minister in charge of that church?

A. Yes, sir.

Q. Where is that church situated with reference to the county court-house and the county jail?

A. The county court-house is just across the street from the church; just across 7th street. The county jail is just across the street on Walnut. It is midway of the block.

Q. It is on the same street and on the same side of the street as the church?

A. Yes, sir; particularly with my study, which is in the rear end of the church.

Q. And it is in the next block, across 7th street on Walnut, and about the middle of the block?

A. About the middle of the block; yes, sir.

Q. Your study, you say, is in the church?

A. Yes, sir.

Q. Facing on what street?

A. It is on the corner of Walnut and 7th.

Q. Are you accustomed to occupy your study during the day?

A. Every morning till 12 o'clock; from half past 7 till 12.

1795 Q. I will ask you whether or not McCallie avenue intersects Georgia avenue at or near the point that Georgia avenue is intersected by 7th street?

A. It is about half a block. McCallie intersects Georgia avenue about half a block south of 7th street.

Q. Georgia avenue, then, is the western terminus of McCallie and the eastern terminus of 7th street?

A. Yes, sir.

Q. I will ask you to state, Doctor, whether you have a wide acquaintance in Chattanooga?

A. Well, I have a considerable acquaintance. I used to know almost everybody, but they grow so fast lately that I do not keep up with them.

Q. I will ask you whether or not you mix and associate with the people generally, regardless of caste or condition in life?

A. Well, I am called almost everywhere, and generally go where I am called, and it does not matter. It is my business to go where I am called.

Q. And do you mix with the citizenship, the men of the world?

A. Yes, sir; I mix with all classes.

Q. How long have you known the defendant, Shipp?

A. I have known him since he came to the city. I have forgotten just how long that is; 25 years, probably, or more. I do not remember just how long.

Q. Are you and he generally acquainted with the same peo-
1796 ple? Do you know the same people that he knows and associates with?

A. Very much. We were close neighbors for quite a number of years. He lived just across the street from us on McCallie avenue.

Q. I will ask you if you know the general character of Captain Shipp in the neighborhood in which he and you reside and have resided for these years?

A. Yes, sir. It is that of a most excellent gentleman for uprightness, integrity, and everything of that kind.

Q. Is his character good or bad?

A. Good.

Q. I will ask you what his character is for peace, quiet, and good order?

Mr. SANFORD. The same objection is made to that.

A. He was always, as I knew him, a lover of peace and desired quiet and good order in the community.

Q. State whether or not in his citizenship——

Mr. SANFORD. I object to that last question as not going to the matter of general reputation, but merely the personal opinion of the witness.

By Mr. PRITCHARD:

Q. State whether or not in the community he has the reputation of standing for good order and peace and those things which make for good order and peace.

Mr. SANFORD. I object to that question as leading.

A. I have never heard anything to the contrary, sir. He has always been that.

1797 By Mr. PRITCHARD:

Q. Doctor, I will ask you whether you were here during the period from the arrest of Ed. Johnson on the charge of having committed rape upon this young woman out here at the cemetery up to the time that Johnson was lynched?

A. All that time.

Q. Were you constantly in Chattanooga?

A. Yes, sir.

Q. Were you during that period constantly mixing with people, as you had been accustomed to do?

A. All the time; yes, sir. I was usually among the people; sometimes a little more so when the excitement was up.

Q. Do you recall the day that Johnson was arrested and the day that there was an attempt made to lynch him at the jail?

A. I remember the time of the arrest and the evening that there was an effort made to take him out of the jail.

Q. Were you during that period in close touch with Captain Shipp and familiar with the efforts made to protect the prisoner?

A. Most of the time I was.

Q. I will ask you now to state in detail the occurrences of that particular period with which you are familiar—Johnson's arrest, the attempt to lynch him, what you did, what contact you were brought in with the officials, and what they did.

1798 A. At the time, as I believe, the sheriff, as oftentimes the other officials, dropped into my study and had consultations with me. We had some consultations in regard to that, and the effort to arrest and obtain the prisoner, or the man who was suspected of the rape. At that time we held a consultation with the sheriff and the judge. I was called by the criminal judge into council with the sheriff and the attorneys on both sides about the trial of the case and what we thought ought to be done; and everything seemed to me to be a desire to give the man a fair hearing and——

Mr. SANFORD. Excuse me, Doctor, just a moment. I desire to object to that latter testimony on two grounds: First, that it is matter entirely irrelevant to any issue in this case, and second, that it is merely the opinion of the witness.

By Mr. PRITCHARD:

Q. Proceed, Doctor.

A. I was called as an old citizen and as having to do with a great many things. I am a preacher, but they make me do everything. The judge sent for me; I do not know but what the sheriff himself came for me to go over to that council, and the question was up whether we could have a fair trial, and we agreed that we could; and then the trial proceeded.

Mr. SANFORD. It is understood that objection is made to all this testimony.

Mr. PRITCHARD. Yes.

1799 Mr. SANFORD. I do not want to be continually interrupting the Doctor.

Mr. PRITCHARD. You may make any objections you wish when we are through, and they may be considered as made at the time.

By Mr. PRITCHARD:

Q. Before the trial, and on the night of this attempt at lynching, did you spend any time at the jail; were you there?

A. I was at the jail several times, sir. I do not remember exactly the dates, but at several times I was asked by the sheriff to be at the jail. The governor being my nephew, he wanted me to have some influence with the governor. He had just been over to the city and I had had a conference with him, and then he had asked me to keep in touch with him by phone; and so I spent a good many evenings—I say a good many evenings; I was several times at the jail; I do not know how many. It was the desire of the sheriff that I should have

the authority of the governor given him to call out the militia here, and particularly as I remember now, to call out Troop B, which was one of our best militia forces, for the protection of the jail and the prisoner.

Q. Did you put yourself into communication with the governor?

A. Yes, sir.

Q. And was it arranged that the troops should be called out?

1800 A. I asked the governor to have—well, really to sleep with the telephone at his ear and that I would do the same in the jail until probably midnight, anyway; and he just assured me that "anything you ask for the protection of the prisoner shall be given."

Q. Were the military called out?

A. I do not think we called the militia that night. I do not think it was; I am not certain about that. It was called out at another time. Maybe it was the same time. I have forgotten exactly.

Q. At the time of Johnson's arrest, state whether excitement ran high; whether there was much public excitement.

A. Yes, there was considerable excitement at that time; quite so, in fact. The crime was abhorrent and it aroused the populace very much.

Q. Were there knots and gatherings of the people, and was the matter much discussed upon the streets and highways?

A. Very much indeed, sir; very much indeed. I went to St. Elmo myself to see about some matters, particularly the family, and saw knots of people gathered together there.

Q. I will ask you whether or not, at the time when this first mob made the attempt to lynch Johnson, the excitement was evident from the conversations and conduct of the people?

1801 A. Oh, yes. It took possession of the entire chamber of commerce and the whole populace.

Q. Now we will assume that the arrest occurred about the 25th of January, or whatever the date was.

Mr. CLIFT. The crime was on the 23rd and the arrest on the 25th.

By Mr. PRITCHARD:

Q. We will assume that the arrest occurred on the 25th of January, that the trial occurred immediately preceding the 9th of February, and that Johnson was convicted on the 9th of February. I will ask you to state what the condition of the public excitement, as manifested, was during that period up to the time of Johnson's trial, conviction, and sentence.

A. The excitement was quite high before and during the time of the trial; but it seemed to subside exceedingly when the conviction was announced.

Q. That conviction occurred on the 9th; and do you know about Johnson's removal immediately that day?

A. Well, I just heard of it. I just heard that he was taken away.

Q. Did you hear of his being brought back on the 10th or 11th of March?

A. Yes; he was brought back.

Q. Now, during Johnson's absence from February 9th until March 10th or 11th, I will ask you to state whether there was any excitement upon the subject during that period.

A. Very little, if I remember; very little excitement.

1802 Q. State if the public mind, as manifested and apparent to you from your mingling with the people, was upon the crime after the conviction, or had been diverted from it.

A. Well, it had subsided in a great measure after the conviction. The public mind seemed to be satisfied with the decision of the court.

Q. Now, coming back to the time of the lynching, and the time after Johnson had been brought back here, about the 10th or 11th of March, I will ask you to state what the state of the public mind was then.

A. As I remember, everything was quiet, very quiet at that time. That was the time that he was brought back from Knoxville, that you refer to?

Q. Yes, sir: from that time on to the time of the lynching.

A. It was all very quiet. There was nothing of any excitement particularly anywhere.

Q. Was there anything in the public demeanor, expression, or conduct, or anything that you heard or knew of, to cause you to apprehend that Johnson would be lynched at the time that he was lynched?

A. Nothing whatever, sir; nothing whatever, in my associations with the brethren, with the ministers, or with the people.

Q. Was there anything, in your judgment, knowing the public as you did, to cause a reasonably prudent officer to suspect or

1803 believe that Johnson was in danger of being lynched at the time he was lynched?

A. I would not think so at all. I had no thought of it, and I did not know any man at the time that had any thought of it. It was a suprise to us all—a very great surprise.

Q. On the night of the actual lynching, where were you?

A. Well, I had to refer to my record to see where I was. I keep a little notebook for that purpose. That evening I had been called to go over to a family on the bluff, or on Payne street, on the river, to see some young parties who were to get married—Mr. Crutchfield's daughter.

Q. Mr. Tom Crutchfield's daughter?

A. Mr. Tom Crutchfield's daughter. She married a gentleman from Jericho. They had a little gathering of young people and wanted me among them to get acquainted with them, and wanted the ceremony on Wednesday. Monday evening I took my daughter and went over there, and, as I remember, we were there till probably nine, maybe a quarter past nine o'clock. In walking back home, down Georgia avenue, I said to here: "We had better go by my study." I had left considerable fire there, and I wanted to see that there was no danger. We went down, and everything was as quiet as could be on the way down, around the court-house and everywhere,

except under the lamplight there, under the electric light, there were some boys——

Q. Where was that lamplight, doctor?

1804 A. At the corner of 7th and Walnut, just half a block from the jail. There seemed to be some half grown lads there, playing, as we thought, my daughter and I; and one of them had a handkerchief, as I thought, tied around his head. He had lost his hat, or something; that was the impression. I went in and looked at the fire and then came out, and the boys were still playing and scuffling there, and one of them began swearing; and she immediately said: "Father, let us go;" and we went right on home. That was all that I saw or heard.

Q. What time was that, doctor?

A. That was, I think, a quarter past 9, or maybe half past 9 o'clock. I do not remember exactly.

Q. You were then within half a block of the jail?

A. Yes, sir.

Q. And was there anything then, even up to that hour, that caused you to believe, or anything that you saw that indicated the gathering of a mob?

A. Nothing in the world; no, sir.

Q. From there you and your daughter went to your residence on McCallie avenue?

A. Yes, sir.

Q. Which is the street that led immediately east from that point?

A. Yes, sir.

Q. When did you know of the lynching?

A. I did not know of it till next morning, sir. The first I knew of it was in the morning paper.

1805 Q. You heard of the lynching next morning by reading it in the newspaper?

A. Yes, sir.

Q. Do you recall whether that next day was a strenuous day in the city?

A. That was the most strenuous day I ever saw in the city of Chattanooga or anywhere else, except in the time of the civil war.

Q. In what respect? Just state what the condition was.

A. Well, the excitement was such that the best people felt that everything was just on the edge of a riot of the races in spite of everything. There were telephones coming in from different industries saying that their employees had left and were up town buying arms and ammunition; and I was called up, as I remember now, by the chief of police to see if we could not do something to help in some way. At the same time, as I now remember, the sheriff came over to my office and asked that I would see the ministers as quick as I could, and particularly that we get hold *hold* of some of the good colored brethren we have here and cooperate with them. I then called up the mayor, and he told me that he and the chief of police were going out to close every saloon.

Q. The saloons were closed, were they?

A. Yes, sir; the saloons were all closed, as I understood.

Q. State whether the people of the town put themselves together for the purpose of preserving order?

1806

A. Oh, yes.

Q. And whether order was preserved.

A. Yes. We got together with the colored brethren and said that all good brethren must stand together now for peace and good order, and the good citizens must cooperate.

Q. Did the sheriff cooperate with you all the time?

A. Yes, sir; the sheriff, the mayor, and the chief of police, and we all said that peace and order should be preserved. We were not going to allow a class of people to destroy the reputation and good character of the city, if it was possible to prevent it; and so the best citizens of the whole town, as I never saw them before, put themselves out for the preservation of peace and order.

Q. Were the efforts to preserve peace and order directed solely to the lawless element, without regard to color or race?

A. There was no question of that, sir. I remember that the news came from St. Elmo that the whites there were going to drive all the negroes out; and we notified them that we were sending the Gatling gun out there, and any rioters, no matter who they were, would be fired on. It was to preserve peace and order; that was the main thought.

Q. And did the citizens of this town and the officers succeed in preserving peace?

A. Oh, yes.

1807

Q. Without the assistance of the governor or the military or anything of the sort?

A. Yes, sir. They banded themselves together for that purpose, and they said they could do it, and they did do it.

Q. Did you go out to St. Elmo?

A. I went out to St. Elmo the day after the tragedy. I went to see the family.

Q. You saw the family?

A. I saw the family. I was interested in them. They were a family I thought ought to be sympathized with and looked after.

Q. Did you see the father of this girl?

A. Yes, sir.

Q. Did you see the girl herself?

A. Yes, sir.

Q. State whether or not, when you went there, the marks of the assault were upon the person of this girl.

Mr. SANFORD. I must put in a protest against that testimony as entirely irrelevant. It is a matter utterly foreign and irrelevant to any issue in this controversy, and not in the remotest way proper to be introduced.

By Mr. PRITCHARD:

Q. You may answer the question, Doctor. I asked you whether or not, when you went there, you saw the girl.

A. Yes, sir; I saw the girl.

Q. I will ask you whether the marks of the assault were still upon her person?

1808 Mr. SANFORD. I renew my most earnest protest against the testimony.

By Mr. PRITCHARD:

Q. Go ahead, Doctor.

The COMMISSIONER. I can not see what that has to do with this question.

Mr. PRITCHARD. I want the answer.

The WITNESS. Shall I answer? I am perfectly willing to tell all I know, sir.

By Mr. PRITCHARD:

Q. I ask you to answer.

A. Well, I went to see the family. I had been with the family some time before, and I went just to have some condolence with them, as I felt it was my duty as a minister. The old gentleman brought in his daughter, and a red mark was around her neck, and he said to me: "Brother Bachman, this thing has put me back in civilization a thousand years." He said: "I am a savage." I stayed with them a while and talked with them as best I could and tried to comfort them and then left.

Q. I will ask you, Doctor, whether or not, from what you saw and observed, this mob—the mob that undertook to take Johnson and failed—was actuated by the abhorrence of the crime and that motive only?

Mr. SANFORD. I object to that question as leading and suggestive and as calling for the opinion of the witness.

By Mr. PRITCHARD:

1809 Q. I ask for your opinion, based upon your observation. That is the only way we can get at motives at all that I know of.

A. The enormity of the crime was the great irritant at the time, it seemed to me. That was the thing above everything that impressed the people.

Q. Doctor, I ought to say, and I will say, that this is gone into here by reason of the fact that the Government is undertaking to show that the actual lynching of Johnson was due to some fear of delay, or something of that sort, and yet when we undertake to show what the actual attempt to lynch him was due to, we are met with objections. It is all right to inquire whether it was out of disrespect to some court somewhere, but it is not right to inquire whether it was by reason of the abhorrence of the crime. So I am asking you that for

930 UNITED STATES OF AMERICA VS. JOSEPH F. SHIPP.

the purpose of showing, first, what that mob was actuated by, and, secondly, that the shock, having passed off, there was no reasonable expectation of this actual lynching.

Mr. SANFORD. I object to the statement of counsel to the witness as to what he wants to prove by him, while he is interrogating him, as leading and suggestive.

By Mr. PRITCHARD:

Q. Doctor, have the pastors and preachers of Chattanooga and the surrounding country an association?

A. Yes, sir; they have a pastors' association.

Q. Do they meet regularly?

A. They meet every Monday morning in my study.

1810 Q. I will ask you whether or not they met on the Monday that this negro was lynched?

A. Yes, sir; they met Monday morning at 9 o'clock, the usual hour.

Q. Has that association a committee on law and order?

A. Yes, sir.

Q. What are the duties of that committee?

A. The duties of that committee are merely to keep a lookout and see what things are going on and what violations are taking place, that we as ministers may be helpers to the officials in seeing that the law is obeyed; and to prevent this man and that man taking up a question and bringing it in, we have a committee of law and order, and when any minister sees a thing that he wants to bring up he reports it to that committee on law and order, and they bring it before the association if they think it ought to be noticed by us.

Q. You had a committee at that time?

A. Yes, sir.

Q. And there was a meeting of the pastors on the morning of the day that Johnson was lynched?

A. Yes, sir.

Q. I will ask you if it would have been one of the duties of that committee from your organization, if the committee or any member of it had known or had reason to believe that there was any apprehension of the lynching of Johnson, to have reported that fact to the pastors' meeting?

1811 A. Yes, sir; that is their business to report anything they think needs our attention.

Q. Was any such report made at that meeting?

A. Nothing.

Q. Was Johnson, or the rape, or any apprehension of lynching, or the safety of the prisoner in any way discussed or considered at that meeting on Monday, the day he was lynched?

A. As I remember, there was no reference to it whatever. There is nothing at all in the record in regard to it. Usually when matters of that kind are discussed it is merely made of record that such a matter was discussed. There was nothing discussed at that time, except probably the raising of the endowment by the Grant Univer-

sity by Dr. Race. That was the chief thing that was before the meeting.

Q. If there had been anything of that sort discussed by the law and order committee, or any member of it, or any member of the association, you have no recollection of it?

A. None whatever.

Q. And your recollection is that there was no such thing discussed?

A. No such thing at all.

Q. Who composed your committee on law and order at that time?

A. I do not remember. Dr. McCallie is one of the standing members.

Q. Dr. Thomas H. McCallie?

1812 A. T. H. McCallie, the old gentleman. Then there was Dr. Jones, Dr. Freeman, and I think the secretary of the Y. M. C. A., Mr. Magill, was a member of that committee at that time.

Q. I will ask you whether Mr. Magill, the secretary of the Y. M. C. A., and a member of that committee, was at that time engaged in canvassing the city, through workers, for any purpose; and if so, for what purpose?

A. As I remember, he reported to that meeting that he had been out Saturday night, in regard to some meetings we were going to have, canvassing with some 25 or 30 men.

Q. Helpers?

A. Helpers; going through the saloons and places of that kind that were open, distributing cards, as the Young Men's Christian Association oftentimes does, asking them to the services. That was on Saturday night.

Q. On Saturday night they had been throughout the town, in the saloons and resorts of that character?

A. Yes, sir.

Q. Did he, as a member of the committee, report that there were any conditions that looked like a lynching?

A. He never reported anything of that kind. It was only just in regard to his work, the distribution of the cards, and the kindness with which he had been met by a great many of the people.

Q. Do you recall how many members of the association were present at that meeting?

A. There were some 12 or 15 of the ministers present that morning.

1813 Q. Were they ministers in active work in the city and suburbs?

A. Yes, sir.

Q. Now with regard to the next meeting; did it occur on the next Monday?

A. The Monday following.

Q. That was after the lynching?

A. Yes, sir.

Q. State whether or not the subject of the lynching was then discussed.

A. That was the great point of discussion then, and the law and order committee had a series of resolutions which they brought in, and after some modifications they were adopted and published, condemning the lynching and deploring the condition of things and disrespect to the courts and to the law of the country. That is a matter of record in our proceedings.

Mr. SANFORD. I desire to note an objection on behalf of the Government to all the testimony on the following points:

To all the testimony as to whether or not the Johnson trial was a fair trial and was expected to be a fair trial, and all statements and conversations in reference thereto between the witness and any other person.

To all conferences and conversations with the sheriff or other persons at the time of the first attempt at lynching.

1814 To all expressions of the witness' opinion as to what the sheriff's desire was at the time of the first attempt at lynching or thereabouts.

To all the conversations of the witness with the governor of the State.

To the expression by the witness of his own opinion as to whether there was any danger of lynching to be apprehended, or what a reasonably prudent official would have apprehended.

To all testimony as to the law and order committee of the pastors' association, what reports it did or did not make, and what reports were or were not made by Mr. Magill as to what had been done the Saturday night previously.

To all of the statements of the witness as to what was done by the best people and other people the day after the lynching and as to the events of the day succeeding the lynching.

To all conversations with the father of the young lady upon whom the assault had been committed.

To the hypothetical question, and the answer thereto, as to what would have been the duty of the law and order committee under hypothetical conditions.

On the ground that all the testimony in reference to those matters is entirely incompetent, irrelevant, not pertinent to the issues in controversy in this case, as hearsay, and as the opinion evidence of the witness on matters upon which opinion evidence is not competent.

1815 Cross-examination by Mr. SANFORD:

Q. Doctor, the abhorrence of the crime of rape had not abated in the community between the time of the original assault and the time that Ed. Johnson was lynched, had it?

A. Very much.

Q. Do you mean there was less abhorrence of the crime?

A. Yes; that is, it was not so vivid in the minds of the people. Of course the crime, when it was thought of——

Q. That was what I asked you. There was no less abhorrence of the crime?

A. No, sir; but it had passed out of the public mind.

Q. But when it was brought to mind vividly, there was just as much abhorrence of the crime at that time as there had been before, was there not?

A. Yes. I should say that the abhorrence of the crime by the thoughtful people was just as great as it is now.

Q. And the abhorrence of the crime by the unthoughtful—by everybody—was just as great at one time as at the other, when brought to mind?

A. Yes, sir.

Q. The opinion of all parts of the community on that question is the same now as it was then and always has been?

A. But I could say that it was not as vivid; it was not as
1816 apparent. The abhorrence, when you would bring it up would be there; but it was not apparent.

Q. That was not the question I intended to ask. I intended to ask merely with reference to the abhorrence of the crime by the community when it was brought to mind.

A. That is right. It was so.

Q. And that was just as intense at the time of the lynching as before, when brought to mind?

A. Yes, sir.

Q. Now, Doctor, of course after Johnson was convicted and sentenced, and the attorneys had decided not to appeal, and the date was set for his execution, there was nothing to keep the matter particularly in the public mind, especially when he was taken to Knoxville?

A. No, sir.

Q. And he was not here for almost a month after he was convicted?

A. No, sir.

Q. And there was no apprehension of a lynching during that time?

A. No; there was no apprehension at all of anything of the kind. It was quiet in the community.

Q. Now, the main reason for that was that it was supposed to be definitely settled that he would be executed according to law, and there was no motive for any private vengeance; the vengeance of any private citizens, I mean?

A. Yes.

Q. And the defendant Johnson was away in the city of Knoxville and in jail there?

1817 A. Yes; there was nothing, of course—no excitement in regard to the matter at all, you might say.

Q. Did you keep familiar with the course of the proceedings, from the public press, in reference to the matter?

A. Not very particularly, sir. I get tired of reading a great many things, and I quit sometimes.

Q. Did you read a statement made by Mr. Thomas, one of the attorneys for Johnson, as to the reasons why they did not appeal?

A. I remember reading it, but I do not remember just now the character of it. I know I did not approve of it very particularly.

Q. Do you remember what was in it?

A. I do not now, sir.

Q. Do you remember any statements that he made in it?

A. I do not now remember what statements he made in it. I had had counsel with Mr. Shepherd in regard to the matter, and he had so stated the facts that I paid little attention to anything else.

Q. Now, Doctor, when was the application made to Judge Clark for the writ of habeas corpus?

A. Well, I do not remember dates at all, sir, in regard to that matter.

Q. Did not that have a tendency, Doctor, to bring the subject of the Ed. Johnson case before the public mind again?

A. Oh, it did some; yes, sir.

1818 Q. And to bring that whole occurrence before the public?

A. Yes.

Q. From the time the application was made to Judge Clark the newspapers kept the case before the public, did they not?

A. Yes; but——

Q. And before that was done, did not two negro lawyers of this city make an application to Judge McReynolds for a new trial, and to intervene in the case and take the case to the supreme court of the State? Do you remember that?

A. Yes, sir.

Q. And did they not in that application, which was reported in the papers the next day, reflect on the white attorneys because they had not taken an appeal, and claim that they had abandoned Johnson? You remember that, do you not?

A. Well, I remember the taking up of the case by these colored lawyers. What reflections were made I do not now just remember. As I say, my consultation with Mr. Shepherd——

Mr. SANFORD. I did not ask you for that.

Mr. PRITCHARD. I would like to see that paper you are talking about. I have not seen anything on that subject in the record.

Mr. SANFORD. You can get if you want it.

Mr. PRITCHARD. If it is in the record, I object to asking the

1819 witness about it. The paper will show for itself.

By Mr. SANFORD:

Q. Doctor, did not that have a tendency to inflame public feeling with the race feeling as it then existed?

A. Well, it was an irritant, of course. There is no doubt about that.

Q. It would tend to revive the feeling and bitterness on the subject, would it not?

A. Yes. It would tend to revive a feeling, not particularly against the race, but more particularly against those men taking it up after the white men had said that it ought not to be taken up.

Q. And it would have a dangerous effect on the lawless element of the community, the men of the community that would be inclined to lynch him?

A. It would that.

Q. They are the men that would be inflamed by things of that sort?

A. Yes, sir.

Q. Then, Doctor, Judge Clark decided that he would not grant the writ of habeas corpus, did he not? That was announced in the papers?

A. Yes, sir.

Q. He granted a stay of execution for ten days; and Johnson was brought back to Chattanooga?

A. Yes, sir.

Q. And was it not, in those intervening days, the general
1820 opinion here that the Supreme Court would dismiss the appeal, that nothing further would come of it, and that Johnson would be hung on the day fixed, or the day to which the governor had granted the reprieve?

A. Well, I hardly know what was the opinion. It was not discussed very much, because Judge Clark having dismissed it we thought that the court would go ahead with whatever was right. It was not a matter of public discussion among the populace as it had been before.

Q. The fact that Judge Clark had acted on it and dismissed the appeal tended to allay matters?

A. Yes.

Q. The people thought that Ed. Johnson would be hung at the time fixed under the governor's reprieve. That was the general expectation, was it not?

A. Well, I do not know that it was the general expectation. I think a great many of the thoughtful ones were uncertain what would be the issue of the matter in the appeal to the Supreme Court.

Q. Was not that the expectation expressed in the daily papers, generally speaking?

A. Well, I can say I do not remember what the papers did say at that time.

Q. You do not remember?

A. I do not remember; no, sir.

Q. Doctor, do you remember when you heard that Mr. Justice Harlan had granted the appeal?

A. No, sir; I do not.

1821 Q. Do you remember whether you had heard it before you went to the meeting of the pastors' association, or before it was held at your residence?

A. I do not know now, sir. I could not say whether it was then or after that; but if it was published Monday morning I glanced at it, and I was cognizant of the matter, as most of us would be looking over the daily papers.

Q. You have no affirmative recollection, however, as to that matter now?

A. No, sir.

Q. Whether you did or did not see it?

A. No. I feel satisfied that Iwas conscious of the Supreme Court having taken the matter in hand.

Q. Do you know when you had learned that? Can you give us any idea?

A. I can give you no date at all in regard to that matter; but it was very soon after it was promulgated that I would learn it.

Q. But you do not remember, as I understand, when it was promulgated?

A. No, sir; I do not.

Q. Whether it was one day or two or three days before?

A. No, sir.

Q. It may have been more and may have been less?

A. It may have been more and may have been less.

Q. So far as you recollect?

1822 A. Yes, sir. Whether it was Saturday or not I do not remember.

Q. You did not go anywhere that morning, did you, Doctor, before the meeting of the pastors' association?

A. Not that I remember at all; no, sir. I do not remember going anywhere except to my study.

Q. Doctor, your church is one composed of parishioners of prominence here, is it not? You do not have a general class of parishioners in your congregation that would bring you in touch with all the different elements in the city; is not that true?

A. Well——

Q. It is an old-established church here?

A. Yes. The congregation is composed of most excellent people; I think, sir.

Q. I understand that.

A. But I myself have to do with all of them outside as well as inside, and I have to go everywhere and mingle with all classes.

Q. My inquiry was directed to the character of your own congregation and your direct parishioners.

A. Yes, sir.

Q. Doctor, did that law and order committee ever take any action to prosecute these lynchers?

A. No, sir. We never take any action to prosecute ourselves. We go behind the officials. I have plead for years that the business of the ministry was to stand behind the oficials, to help them

1823 execute the law. We are not executors in ary way whatever.

Q. Do you know whether they ever got behind the officials in the effort to prosecute any of the lynchers?

A. Well, I know a great many of them did.

Q. On that committee?

A. Yes. Well, I do not know whether of that committee—I think of that committee. I think they did, sir. I was thinking of the ministers particularly. I think Dr. McCallie has always been active in getting with the officials——

Q. Of course you understand I am asking with reference to this particular case; not what they are in the habit of doing, but what was done in reference to this particular lynching—if you know of your own knowledge whether the members of this committee made any effort to secure the conviction and punishment of the lynchers of Ed. Johnson.

A. We did just this, as a pastors' association: After this resolution was introduced condemning the act of the mob, the committee, I remember, was instructed and all the pastors were enjoined to see that the officials ferret out the crime if possible. That was the action of the association.

Q. Do you know what was done in pursuance of that?

A. I do not, sir.

Q. You do not?

A. No, sir; I do not.

1824 Q. Doctor, at the time of the attempt at lynching, how long did it take to get a force there to prevent the mob; do you remember?

A. I do not know, sir. I was not on the field. I had been called to the chamber of commerce, but I could not get down very well; and I am rather thankful now that I did not, from the way they treated those that were sent up there.

Q. I thought you were there yourself.

A. No, sir; I was not there.

Q. You have no personal knowledge of that at all?

A. No, sir; I have no personal knowledge of that.

Redirect examination by Mr. PRITCHARD:

Q. You were asked a while ago by Mr. Sanford whether or not the committee on law and order prosecuted the lynchers of Ed. Johnson—for what purpose I do not know. I will ask you whether the pastors' law-and-order committee are a conscientious body of men that undertake to preserve law and order, and do what they esteem to be their duty in that respect, or whether they are pretenders?

A. We usually just try to help the officials, the executors of the law and preservers of the peace.

Q. I assume that you neither connived at the lynching nor conspired to protect the lynchers.

A. We hardly ever do anything that we know to be contrary to the teachings of Saint Paul, if we can help it—that we will

1825 be obedient to the powers that be; and we help them all that we can.

Recross-examination by Mr. SANFORD:

Q. And yet, Doctor, with that effort on the part of the pastors' association to secure the prosecution of the lynchers, they failed to get any indictments against a single person in this county for that lynching.

A. I was going to say——

Q. Although the pastors were trying to aid in the prosecution of these lynchers, no indictment was found against a single man.

A. No. I was going to say, the pastors use their moral influence in every way they can for the preservation of law and the execution of the law; and if officials do not seem to do that—sometimes we find that they can not—why, we leave that with them; that is all.

Rev. WILLIAM C. ROBERTSON, a witness produced on behalf of the defendants, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. LYNCH:

Q. Dr. Robertson, do you live in Chattanooga?

A. Yes, sir.

Q. How long have you lived here?

1826 A. I have lived here a little over six years now.

Q. What have you been doing since you have been here, Doctor, and what are you doing now?

A. I have been doing pastor's work.

Q. Are you the rector of one of the churches here, and if so, which church?

A. I am rector of Christ Church, Douglas and McCallie.

Q. Is that an Episcopal Church?

A. Yes, sir.

Q. Were you rector of that church when the lynching of Ed. Johnson occurred?

A. Yes, sir.

Q. Doctor, I will ask you if you remember the circumstance of the crime with which Ed. Johnson was charged—rape—a few weeks before he was lynched?

A. Very well, as I read it in the papers and also heard it on the street.

Q. I will ask you, Doctor, whether or not, at the time of the commission of the crime and the arrest of Johnson, there was a great deal of excitement and feeling on the subject in Chattanooga?

A. A great deal; yes, sir.

Q. Was it discussed a great deal or not?

A. It was discussed by everybody, I presume. You mean at the time of the crime?

Q. Yes.

A. Yes.

1827 Q. Do you remember the first attempt to lynch him?

A. Very well, sir. You mean when the prisoner was taken to Knoxville?

Q. Yes.

A. Yes, sir.

Q. Doctor, do you remember the trial of Ed. Johnson?

A. I remember reading it in the papers. I did not read all of it. I never attended the trial at all.

Q. I mean, you remember the circumstances of the trial and conviction?

A. Yes, sir.

Q. Now, Doctor, after the trial and conviction of Johnson did the excitement and discussion of the case continue or die out?

A. It died out, as I remember, very completely.

Q. At the time the matter was again taken up and application made for a writ of habeas corpus, did that revive the excitement and discussion of lynching, or not?

A. At the time of what?

Q. At the time the case was again taken up in the federal court and an application made for a writ of habeas corpus, a few days before he was lynched.

Mr. SANFORD. I object to the statement as to when it was.

By. Mr. LYNCH:

Q. Was the excitement still dead then, or did that revive the excitement?

A. You mean previous to the actual lynching?

1828 Q. Yes.

A. As I remember, it died out.

Q. I mean now, Doctor, did the fact that it was being taken up again cause any talk of lynching or revive the excitement?

A. Not that I heard. I did not hear of any.

Q. You say you are engaged in pastor's work. I will ask you whether that brings you in contact with people generally here in Chattanooga?

A. Very generally, all classes; yes, sir.

Q. I will ask you whether or not, up to the night of the lynching, you were mixing and mingling with all classes of people here in Chattanooga?

A. Every description; yes, sir; rich and poor, both.

Q. In that work, and in mingling with the people, I will ask you if you heard any discussion of this case at all, or saw any excitement with reference to Ed. Johnson at that time?

A. I can not say that I heard no discussion, but I can say that there was no excitement, so far as I remember. It may have been discussed; I do not know. I mean I may have heard it; I would not say positively that I did not hear it. I do not remember hearing it, but I remember distinctly there was no excitement about anything I heard said.

Q. I will ask you if you heard any talk of lynching, or of any apprehension of the lynching of Johnson, on that day or at that time?

1829 A. None whatever that I remember; no, sir.

Q. I will ask you if anything occurred among the people that caused apprehension of lynching, that you could see?

A. Not so far as I remember at all, from reading the papers, or from what I could see on the streets, or anywhere else.

Q. Doctor, I will ask you if know Captain Shipp?

A. Very well; yes, sir.

Q. I will ask you if you think you know his general reputation and character in this community?

A. I think I know it very well; yes, sir.

Q. Is it good or bad?

A. Eminently good, sir.

Q. I will ask you if, from that general reputation and character, you would believe him on his oath?

A. I certainly would; yes, sir.

Q. Do you know his character for peace and good order, Doctor?

A. Yes, sir.

Q. Is that good or bad?

A. Very good.

Cross-examination by Mr. SANFORD:

Q. How long have you been a pastor here, Doctor?

1830 A. Six years, this time, sir. I was here in Chattanooga before, nine years ago, for a short period.

Q. How long was it between Ed. Johnson's original arrest and his final lynching?

A. How long was it?

Q. Yes.

A. I can not tell you, sir.

Q. Have you any recollection?

A. Well, just judging on the spur of the moment, I believe the lynching occurred the 19th of January, and crime occurred two months or three months before, I believe. I did not follow the newspapers very closely, and I did not expect to be called as a witness; so I have not posted myself.

Q. You did not follow the case, then, very closely?

A. Not particularly closely.

Q. In the court room?

A. No, sir.

Q. I understood you to speak a moment ago of the expression of the public mind as shown in the newspapers. Did you not refer to that a moment ago?

A. Yes, sir.

Q. You did follow it, then, in the newspapers?

A. Yes, sir.

Q. Then how long was it after he was arrested before he was tried?

A. I could not tell you.

Q. You can not tell us that?

1831 A. No, sir.

Q. When he was tried what became of him? What did they do with him after he had been convicted?

A. They sent him to the jail.

Q. Where?

A. The county jail, as I remember.

Q. And how long did they keep him in the county jail after he was convicted?

A. I should think about 23 or 24 days, or something like that.

Q. He was here in the Hamilton County jail, then, according to your recollection, about 23 or 24 days?

A. Yes, sir; so far as I know.

Q. Then what was done with him?

A. Then, as I remember, he was taken out and lynched.

Q. Then he was taken out and lynched. Do you remember anything about an application to Judge Clark for a writ of habeas corpus?

A. No, sir. I remember something of it, but I could not state anything in regard to it.

Q. You do not know when that was?

A. No, sir.

Q. Do you remember anything about an application to the Supreme Court for an appeal?

A. I remember an appeal was made and granted.

Q. When was that? Was that a week or one day or two days or a month before he was lynched?

A. As I remember, it was a day or two days before.

1832 Q. Where did you see it?

A. In the papers.

Q. What papers?

A. The Chattanooga Times.

Q. In what issue? How long before the lynching?

A. Oh, a day or two. I do not remember the exact date. It was either the day of the lynching or the day before or the day before that; I do not remember that, of course.

Q. And you had been reading the papers about the progress of the case?

A. Very spasmodically.

Q. You stated that your opinion of public sentiment was gained largely from the papers?

A. Yes, sir—no; I did not state that, sir. I said it was gained both from my experience around the city in pastor's work and also from the newspapers.

Q. Partly from them?

A. Yes, sir.

Q. I will ask you if you saw in the Chattanooga Times, on the morning of Friday, March 16th, three days before he was lynched, this statement in a report that the negro attorney named Parden had gone to Washington to get an appeal:

"People here are decidedly anxious as to whether Johnson is to suffer death for his crime next Monday or escape for an indef-

1833 inite period by reason of intervention of the court at Washing-

ton. More unrest on the subject exists than was anticipated when Johnson was brought back to the county."

Then later in the same article:

"During the recent days of suspense as to his execution the desire for information has been feverish, and telephones at localities where information has been thought to be obtainable have been kept busy by inquirers."

Did you see anything of that sort in the paper?

A. I think I remember reading that, sir.

Q. That indicated a feverish condition of the public mind at that time, three days before the lynching?

A. Which I did not experience in my rounds and in pastoral work.

Q. Is your pastoral work with your own church mainly or is it outside?

A. It is both, sir.

Q. To what extent is it outside of your own church?

A. Probably half my time is taken up with outsiders.

Q. Does it take you into the suburbs of the city or into the city proper?

A. It takes me into the suburbs. My particular suburb is Highland Park and out that way. Then I have been interested towards the mountain recently.

Q. That is since this occurrence?

A. Well, soon after; yes, sir.

1834 THOMAS H. PAYNE, a witness produced on behalf of the defendants, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Mr. Payne, how long have you lived in Chattanooga?

A. 42 years past.

Q. In what business are you engaged?

A. Books and stationery.

Q. Have you a considerable acquaintance in the city?

A. Yes, sir.

Q. I will ask you if you know Captain J. F. Shipp, the defendant?

A. Yes, sir; very well.

Q. How long have you known Captain Shipp?

A. I think I have known him ever since he came here. I don't know how long; I guess 30 years, pretty near—about that.

Q. I will ask you if you know his general character in the community?

A. Yes, sir; I think I do.

Q. Is that general character good or bad?

A. It is good.

Q. Do you know his general character for peace, quiet, and good order?

Mr. SANFORD. Mr. Pritchard, yesterday we agreed with Mr. Lynch that a general objection should be considered to all testimony of that

1835 character. You were not here yesterday. Is that agreeable to you?

Mr. PRITCHARD. Yes; and, so far as we are concerned, you may put in your objections at the conclusion of the witness' testimony at any time.

Mr. SANFORD. That is a little too hard to do. I appreciate your offer. The understanding, then, is that all testimony as to character for peace and good order is objected to as incompetent and irrelevant.

Mr. PRITCHARD. All right.

By Mr. PRITCHARD:

Q. Did you answer my question, Mr. Payne, as to his character for peace, quiet, and good order?

A. It has been always considered good.

Q. You know that character?

A. Yes, sir.

Q. And it is good?

A. Yes, sir.

Q. Mr. Payne, were you a resident of Chattanooga at the time of the arrest and the lynching of Ed. Johnson?

A. I was.

Q. I will ask you to state whether during that period, and up to the time of his trial and at the time of the attempt to lynch him, the excitement was running high here.

A. Yes, sir; it was.

Q. You remember that occasion when an attempt was made to lynch him?

A. Yes, sir.

1836 Q. Do you remember whether there was excitement the next day after the attempt to lynch him?

A. After the attempt to lynch him?

Q. The next day after?

A. I don't remember of much excitement then. I didn't pay much attention to the affair.

Q. Now, at the time and for some weeks previous to the time of his actual lynching, state whether or not there was any public excitement.

A. I don't know of any at all, personally.

Q. Did you know or did you hear of anything to cause you to apprehend that a lynching was about to take place or would take place?

A. I did not; no.

Q. Your store is on Market street?

A. Yes, sir.

Q. Is it in the principal business part of the city?

A. Yes, sir; between Eighth and Ninth.

Q. Is that the principal business portion of the city?

A. I think so.

Q. I will ask you whether your store is much frequented?

A. Yes, sir.

Q. And you say you heard nothing whatever to indicate that there was any danger of a lynching?

A. No, sir; I heard nothing.

1837 Q. Did you know of the existence of any feeling favorable to mob violence at that time?

A. I did not.

Q. Were you a member of any of the boards of the city or not?

A. At that time?

Q. Yes, sir.

A. No; not at that time.

Q. Were you not on the education board at that time?

A. I was on that board for 12 or 14 years, but not for a year past.

Q. You are on the excise board now?

A. Yes, sir.

Q. But you were not on the excise board then?

A. No; that had not been organized at that time.

Cross-examination by Mr. SANFORD:

Q. Mr. Payne, how closely did you follow this Ed. Johnson matter?

A. Only from reading the paper. I didn't take very much interest in it.

Q. You did not take very much interest in it? You did not follow it very closely, as a matter of fact, did you?

A. Well, I read the paper about the time he was lynched.

Q. Did you follow the proceedings in the case from day to day through the papers?

1838 A. Not in the papers; no, sir.

Q. Do you remember when Ed. Johnson was first arrested?

A. Yes, sir.

Q. Do you remember the date?

A. No; I do not.

Q. Do you remember the date that the first attempt at lynching occurred?

A. I don't remember the date.

Q. Do you remember how long it was after the first attempt at lynching that he was tried?

A. I couldn't give you the date.

Q. Do you remember how long the trial lasted?

A. No, sir.

Q. Do you remember what was done with him after he had been convicted in the court?

A. Yes, sir.

Q. What was done with him?

A. He was put in jail.

Q. Where?

A. In this city.

Q. How long was he kept in the jail in this city?

A. I can't tell you the time.

Q. Then what was done with him? What was the next step taken? Did he appeal to the supreme court of the state?

A. So the papers stated.

Q. What lawyers appealed for him?

1839 A. I couldn't state.

Q. Did the lawyers that had his case from the start, Mr. Thomas and those other gentlemen, take an appeal for him to the Supreme Court of the State?

A. Well, it was my understanding they did; but I can't tell you.

Q. It was your understanding that they did?

A. Yes, sir.

Q. With what success did they do that?

A. A stay of proceedings.

Q. A stay of proceedings by the Supreme Court of the State?

A. That was my understanding.

Q. And then, after the stay of proceedings by the Supreme Court of the State, he was lynched; is that your understanding?

A. Yes, sir.

Q. You have a bookstore?

A. Yes, sir.

Q. And it is the largest bookstore in the city, and the best one, is it not?

A. Well, I think so.

Q. It is not frequented by the disorderly classes, is it?

A. No, sir.

Q. It is frequented by the book-loving, orderly people of the city; that is a fact, is it not?

A. Yes, sir.

1840 R. H. PARRENT, a witness produced on behalf of the defendants, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Mr. Parrent, how long have you lived in Chattanooga?

A. About 23 years this fall, I think it is.

Q. Where did you come from?

A. Kentucky.

Q. What part of Kentucky?

A. Shelbyville, Kentucky.

Q. Were you raised there?

A. No, sir; I was raised partly in Louisville, but the greater part of my early life was near Frankfort, Kentucky, the capital of the State.

Q. What business are you in in Chattanooga?

A. Paint and glass.

Q. I will ask you whether or not your trade is largely with the working men?

A. Yes, sir; largely.

Q. Of the city?

A. Yes, sir.

Q. Where is your place of business?

A. 616 Market street.
Q. On Market street?
A. Yes, sir.
Q. I will ask you whether or not it is a sort of headquarters for paint men in the city?
1841 A. Yes, sir; a great many of them. In fact, most of them deal with me.
Q. Do you run a large establishment?
A. I run a very good establishment; yes, sir.
Q. How long have you been in business in Chattanooga?
A. I have been in business in Chattanooga about 21 years.
Q. Have you a general and wide acquaintance in the city?
A. Why, yes, sir; I think I know most all the old citizens. Of course, there have a good many new ones come in that I don't know, but most of them I do.
Q. I will ask you whether or not you lived neighbor to Captain Shipp, the defendant here?
A. I have, I believe, about two or three years—three years.
Q. How near a neighbor?
A. Next door.
Q. Next door neighbor?
A. Yes, sir.
Q. Do you know him well personally?
A. Captain Shipp was one of the first men I knew when I came to Chattanooga. The reason I remember it so well was by buying part of my furniture from him when I came to Chattanooga.
Q. When he was in business for the firm of Temple & Shipp?
1842 A. Temple & Shipp; yes, sir; on Market street.
Q. You say you knew him well?
A. Yes, sir.
Q. I will ask you if you know the same people he knows and associate with the same people?
A. Yes, sir.
Q. Do you know his general character in the neighborhood in which he lives, and in the community in which he associates?
A. I think I do.
Q. Is it good or bad?
A. It is good.
Q. I will ask you what his character for truth and veracity is, whether it is good or bad?
A. It is good.
Q. I will ask you whether you know his character for peace, quiet, and good order.
A. Yes, sir. It is perfect.
Q. What do you say?
A. I say it is perfect, so far as I know.
Q. You say you lived next door to him?
A. Yes, sir.

Q. Did you live next door to him on the night that this negro, Ed. Johnson, was lynched?

A. Yes, sir.

Q. Do you recall any incident that occurred on the night of the lynching of Ed. Johnson in connection with Captain Shipp? If so, I will ask you to state it.

1843 A. On the night of the lynching—we live so close I can hear him talk over his telephone at almost any time. In fact, the Captain speaks a little bit louder than I do usually; but at the phone we could always tell when the Captain was at home, when he was talking over the phone, by his loud voice. That night, somewheres about 9 o'clock—it may have been a little before or a little after—I heard the Captain talking at the phone, and unusually loud, and I——

Mr. SANFORD. I object to any testimony as to anything that he heard the Captain say that night as incompetent and hearsay.

By Mr. PRITCHARD:

Q. Go back again, Mr. Parrent. You say you heard Captain Shipp at the telephone?

A. I heard him at the telephone; yes, sir.

Q. Did you hear the telephone bell?

A. I heard the telephone bell; yes, sir.

Q. And you heard him at the telephone?

A. Yes, sir.

Q. And he was talking in what sort of a tone of voice?

A. Rather a loud tone of voice.

Q. Go on.

A. Of course you will not allow me to say what I heard——

Q. Yes, we will.

A. I heard him say——

1844 Mr. SANFORD. I object to that statement as incompetent and irrelevant.

Mr. PRITCHARD. We are putting this in because we understood that your objection was in.

Mr. SANFORD. I do not so understand it. If you do so consider it, let it go in.

Mr. PRITCHARD. You had already made it once. Now, I am going to ask for and expect the witness to state what he heard as part of this transaction at the telephone, and I understand that you object to it.

Mr. SANFORD. Yes; that is all right. That is perfectly understood.

By Mr. PRITCHARD:

Q. Now, Mr. Parrent, if you will go back again I will be obliged to you.

A. After the phone rang I heard him at the phone, and heard him say, "I will be there immediately;" and I don't think it was more than two minutes before I heard him leave the house, slam the front

door, and go out in a hurried manner. It was something a little bit unusual, but at the same time I didn't think anything of any particular call for him. I just thought maybe he was called there on some special business.

Q. You did not know what the cause was?

A. No; I did not. I never dreamed of anything.

Q. But the unusual and excited manner——

A. In which he left the house——

Q. Attracted your attention?

1845 A. My attention; yes, sir.

Q. When did you first hear that Johnson was lynched?

A. Next morning when I got the newspaper.

Q. Was there anything that caused you to expect a lynching?

A. No, sir; nothing.

Mr. SANFORD. I object to that testimony as incompetent and irrelevant.

By Mr. PRITCHARD:

Q. I will ask you to state whether or not you had heard or knew of anything to cause you to apprehend that there would be a lynching.

A. Nothing, sir.

Q. I will ask you to state whether or not you knew of the existence of any public excitement or any feeling favorable to mob violence, or saw anything to cause you to apprehend that a lynching was about to occur.

A. None whatever. I never dreamed of anything of the kind at all. I hadn't the most remote idea of any trouble at the jail, or about lynching, or anything.

Mr. SANFORD. You understand that I object to all that testimony as to the witness' own opinion and what he thought about it.

By Mr. PRITCHARD:

Q. I will ask you to state whether or not there was, to your knowledge, any existing public excitement or any existing public tendency toward lynching, or any feeling of lynching.

1846 A. None that I know of. I left the store about six o'clock, and everything was as quiet as could be; and I went on home, and until the next morning, until I went about my business again——

Q. Had you heard of anything?

A. Not a thing in the world; no, sir.

Cross-examination by Mr. SANFORD:

Q. Mr. Parrent, had you been at your store all that day?

A. Yes, sir; as usual.

Q. You stick pretty close to your business generally?

A. As close as my health will permit.

Q. How closely had you followed the Ed. Johnson case? Did you take any special interest in it?

A. None further than I would any other case.

Q. It did not attract your attention particularly from the start?

A. Nothing more than any other lynching would have done.
Q. Do you remember when he was first arrested—the date?
A. How is that?
Q. Do you remember the date when he was first arrested?
A. No, sir; I do not.
1847 Q. Do you remember how long it was after he was arrested before the first attempt at lynching occurred?
A. Well, I don't believe that I could even state that.
Q. Do you remember how long it was after that until he was tried?
A. Well, I couldn't even say that. It was only a short space of time.
Q. Can you tell us how long it was?
A. No, I can not, because I have nothing to call my mind to it.
Q. It did not attract your interest particularly?
A. No, sir.
Q. Do you remember how long the trial lasted, or the occurrences of the trial?
A. I couldn't even state that.
Q. Do you remember whether or not, after he had been convicted, his attorneys, Mr. Thomas and the other white attorneys who represented him, appealed his case or not; and if so, to what court?
A. The case was, I know, taken to a higher court, at Knoxville; but I haven't anything that I could recall that by.
Q. Do you remember who took it, and when? Was that before Judge McReynolds? Did they ask Judge McReynolds for an appeal or not?
A. I couldn't state that.
Q. You do not remember?
A. No, sir.
1848 Q. You do not remember whether he allowed or disallowed it?
A. All I know about it is simply the newspaper report, just like any other case of the kind, you know.
Q. It did not attract your attention much, and you do not remember much about it; is that the fact?
A. I don't remember more about it than any other case of that kind. Of course we couldn't help recollecting it, because a thing of that kind occurring in our town, at our home, we would be very sorry to hear of anything of that kind.
Q. But, as a matter of fact, you do not recollect the steps that were taken in the case, with any degree of accuracy?
A. Why, not with any degree of accuracy.
Q. And you do not know whether his lawyers, Mr. Thomas and Mr. Shepherd and others, appealed his case to the supreme court, whether Judge McReynolds overruled the motion for a new trial, or what they did, do you?
A. Only from the newspaper reports.
Q. Well, from the newspaper reports, do you know what they did?
A. Why, I couldn't call to mind right now.

Q. Then you do not know what they did?

A. No, sir; I wasn't interested enough to follow the case through

Q. Do you know how it got before Judge Clark—who

1849 took it there?

A. It was taken there by the proper parties, I suppose.

Q. Who were the proper parties?

A. I don't know.

Q. And what happened when Judge Clark got through with it? Where did it go?

A. Of course it went to Washington, I suppose.

Q. You suppose. Do you have any recollection about it?

A. Why, of course I remember that; but so far as——

Q. You do recollect?

A. As far as any particular time, &c., I couldn't say. I do remember the newspaper reports, but not having followed the points out particularly to impress my mind with it to ever after repeat it, I don't know anything more definite than that.

Q. Do you remember who took it to Washington—what lawyers, and when?

A. Well, I know that Judge Shepherd was one of the lawyers, and Mr. Pritchard was another one of the lawyers.

Q. And they took it to Washington?

A. I can't say that they did.

Q. I am asking you if that is your recollection?

A. My recollection is—in fact I supposed they were employed in the case.

Q. They were employed in the case to represent Johnson; that is your recollection?

1850 A. Representing Johnson?

Q. Yes.

A. Mr. Pritchard wasn't.

Q. Who was he representing? You have stated that he had something to do with going to Washington. Who did he go for?

A. Well, I can't tell you anything about that. I can't remember the particular points. But they were the lawyers in the case. I don't know what side they were on, or anything about that.

Q. Your recollection is that Mr. Pritchard was one of the lawyers in the case?

A. I know he is at the present time.

Q. I am not asking you about that. I understood you to say that he was one of the lawyers who went to Washington, but which side he was on you do not recollect. Is that correct?

A. No, sir. I know which side he was on at Washington.

Q. Which side was he on? Whom did he represent when they asked for an appeal at Washington?

A. I don't know about that particular case at all. I don't know anything about that part.

Q. You do not know anything about the Ed. Johnson appeal to Washington?

A. I know he was at Washington; of course I know that.

Q. Do you know who the attorneys were?

1851 A. I don't know exactly who the attorneys were.

Q. What is your best recollection?

A. I have no recollection about it, because I haven't charged my memory with it.

Q. I thought you mentioned Mr. Pritchard in that connection.

A. No, sir; I mentioned Mr. Pritchard in connection with the present case.

Q. I am not asking you about the present case. Have I asked you any question about the present case?

A. I presumed it was all one case.

Q. Can you state any question that I have asked you about the present case? I have asked you about the Ed. Johnson appeal to Washington.

A. I answered you by telling you that I really don't remember anything about that.

Q. You do not remember?

A. No, sir.

Q. Now, do you remember when it was decided in the Supreme Court at Washington; how long before the lynching?

A. I couldn't tell you that either. It was only a short time.

Q. Well, how long?

A. I couldn't even tell you that.

Q. You could not even tell that?

A. No, sir.

Q. Do you recollect where you first saw the notice of it?

1852 A. I saw the newspaper notice.

Q. Which paper?

A. Either the Times or the News; I don't know which—possibly both.

Q. And when?

A. When it was announced through the papers. I couldn't tell you when.

Q. You can not tell when?

A. No, sir.

Redirect examination by Mr. PRITCHARD:

Q. Mr. Parrent, Mr. Sanford has asked you a number of questions about remembering the various and sundry occurrences in Johnson's case after he had been tried and convicted here in February, and up to the time he was lynched.

Mr. SANFORD. I object to that statement to the witness.

By Mr. PRITCHARD:

Q. I will ask you now to state whether or not Johnson and his case had, so far as you know, passed out of the public mind entirely and ceased to be discussed.

A. I think so, almost entirely; for I hadn't heard anything said about it particularly up to the time of the lynching.

Q. Up to the time of the lynching had you heard it discussed in any way whatever?

A. Not for quite a long time.

1853 Q. And is it your knowledge that the public even read about it? Do you know whether they even read the details of it?

A. I never was more surprised in my life than I was next morning when I saw the paper notice of the lynching of this negro.

Q. Do you know whether that surprise was general?

A. It was a general surprise to everyone that I heard express themselves. I don't believe I heard a man express himself that did not express surprise.

Mr. SANFORD. I object to that testimony as to expressions of surprise the day after the lynching as incompetent and irrelevant.

Recross-examination by Mr. SANFORD:

Q. And you think that the Johnson case had dropped out of the public mind?

A. Yes, sir; so far as being talked about is concerned. I can state that I don't believe that I had heard the case mentioned for several weeks before the lynching—quite a little while.

Q. And your recollection is that the papers had nothing particular to say about it for some time?

A. Oh, I don't remember what the daily papers said about it. I can't keep track of everything like that. I don't know but what they may have. I am only speaking of what I know and have

1854 heard through the people that I meet. Numbers of people come into the store every day, and if there had been any excitement at all I would have been very apt to have heard about it; but I heard nothing at all.

Q. Is it not a fact that from March 7th, when a petition for a writ of habeas corpus was filed before Judge Clark at Knoxville, this matter was continually in the papers and attracting public attention all the time?

A. Well, sir; I couldn't state whether it was all the time or not. It was pretty soon after the occurrence.

Q. Did you read the papers as the matter was going along?

A. I get the morning and evening paper both.

Q. Do you read the news columns and editorials?

A. I hardly ever fail to.

Q. Did you read an editorial in the Times on March 12th which referred to the hearing before the federal authorities, and counseled public moderation in what they called the emergency? Did you read that?

A. I think so. I don't know about the date.

Q. The editor of the Times evidently thought there was an emergency and it was necessary to counsel public moderation?

Mr. PRITCHARD. I object to what the editor of the Times thought about it. The Government seems to be trying this case more on newspaper reports than on public sentiment.

By Mr. SANFORD:

1855 Q. You saw articles in the papers about it every day before the lynching?

A. I wouldn't say every day.

Q. What do you say?

A. I only say I may or may not have noticed them. I think I noticed them two or three times; I don't remember.

Q. You do not remember whether you did or did not?

A. No; but I know that——

Q. What did they do with Ed. Johnson after he was convicted and sentenced to be hung?

A. He was removed from this jail. I remember that distinctly.

Q. Do you remember where they took him?

A. They took him to Knoxville.

Q. How long did they keep him there?

A. I couldn't say.

Q. What is your recollection?

A. I couldn't say whether it was a week or three weeks or five days. I know Captain Shipp was from home and took him there, but I couldn't tell the length of time he was gone.

Q. Do you remember when he was brought back; how long before the lynching?

A. I know when he was brought back; that is, I heard he was brought back. I never seen the nigger in my life, that I know of.

Q. I am asking you if you know when he was brought back—how long before the lynching?

1856 A. I knew the time they said he was returned.

Q. Can you tell us how long that was before the lynching?

A. I could not.

Redirect examination by Mr. PRITCHARD:

Q. Mr. Sanford has asked you about newspaper publications that occurred after the trial of Johnson—whether the newspapers contained publications almost every day, and so on. I will ask you to state whether or not the Chattanooga newspapers, as well as other papers, frequently "chaw" over and slobber over and wallow around a supposed sensation long after it has passed out of the public mind.

Mr. SANFORD. I object to that as leading and decidedly suggestive; and on behalf of the Chattanooga press I object. In the word "press" I include both papers.

By Mr. PRITCHARD:

Q. I ask you if they do not keep a sensation before the public long after the event has happened, and frequently after the public interest has subsided?

A. I suppose they consider it news; and they do haul it up for awhile.

1857 JAMES A. CALDWELL, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Mr. Caldwell, what is your business?
A. I am a lawyer.
Q. How long have you resided in Chattanooga?
A. Forty years.
Q. And you have been in the practice of law all the time?
A. More or less.
Q. At one time clerk & master here in the chancery court?
A. Yes, sir.
Q. I will ask you if you know Capt. Shipp, the defendant?
A. I do.
Q. How long have you known him?
A. Twenty-five or thirty years, I think. I knew him when he first got to Chattanooga, but I do not remember the date.
Q. Do you know the people with whom he associates?
A. Quite a number of them.
Q. The citizens generally you are acquainted with?
A. Yes, sir.
Q. Do you know whether his acquaintance is general?
A. Very general.
Q. And yours is general?
1858 A. Yes, sir.
Q. I will ask you if you know his reputation?
A. I think I do.
Q. His character?
A. Yes, sir.
Q. Is his character good or bad?
A. Good.
Q. I will ask you to state whether or not you know his general character for truth and veracity.
A. I think so.
Q. Is it good or bad?
A. Good.
Q. Do you know his general character for peace, quiet, and good order?
A. I do, sir.
Q. Is it good or bad?
A. Good.
Q. You were living here during the period covered by the arrest of Johnson and the attempt to lynch him, the trial and sentence, and his final lynching, were you?
A. I was.
Q. I will ask you to state whether, after the trial of Johnson on the 9th of February, there was any excitement in regard to Johnson or the crime in the community.

A. So far as I knew there was not.

1859 Q. Were your opportunities for observing, or not, as good as those of the average citizen, or better, or how?

A. I should think they were at least as good; certainly.

Q. I will ask you whether or not, at the time of the lynching, after he had been brought back here from Knoxville there was any cause to apprehend a lynching?

A. There was not, so far as I knew.

No cross-examination.

JOHN B. NICKLIN, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Are you a resident of Chattanooga?

A. I am, sir.

Q. How long have you lived in Chattanooga?

A. Over forty years.

Q. You have been mayor of the city?

A. I have.

Q. What business are you in?

A. I am a druggist.

Q. How long have you been in the drug business?

A. Forty years.

1860 Q. I will ask you where your store is situated, and where it has been for many years located?

A. Since 1876 it has been at what was formerly 106, and is now 716 Market street, between Seventh and Eighth, on the east side.

Q. The principal business part of the city?

A. Yes, sir.

Q. I will ask you if your store is and for many years has been a place of meeting for citizens and people generally?

A. Well, it has been a very popular resort. Everybody, people of all kinds, have been in there.

Q. I will ask you whether or not it has been so well known that the assembly down there has been called the Nicklen Club?

A. Yes, sir.

Q. For a good many years?

A. Yes, sir.

Q. Do you know Capt. Shipp, the defendant?

A. Yes, sir; very well, sir.

Q. How long have you known him?

A. Fully twenty years; perhaps longer.

Q. I will ask you to state whether or not you have a general acquaintance which is common with his general acquaintance. Do you know the same people he does?

A. I do.

Q. Do you know Capt. Shipp's general character in the community?

A. I do.

1861 Q. Is that general character good or bad?

A. It is of the very best. It is good.

Q. I will ask you if you know his general character for truth and veracity?

A. I would believe him under all circumstances and conditions.

Q. I will ask you to state whether or not you know his general character for peace, quiet, and good order?

A. He has always been a peaceable, law-abiding citizen.

Q. You were here in business during the period of last year covered by the arrest of Johnson and his incarceration in jail, his trial, his being sent away, and his subsequent lynching, were you?

A. Yes, sir.

Q. I will ask you to state whether or not you were at that time acquainted with the public sentiment and feeling of the people, the disposition and tendency and state of the public mind on the subject of Johnson, and the rape?

A. I think I was.

Q. After the attempt to lynch him, and after his trial, state whether or not the public excitement had subsided or whether it was still aroused.

A. Well, as far as my observation went, and those with whom I met, after we had the trial, which the public considered the fairest of trials, they had decided to let the law have its course. There was no excitement, so far as I know.

1862 Q. Speaking from your observation and knowledge, what you heard and what you discussed among the citizenship, was there, so far as that extended, any reason to apprehend or to expect or to anticipate violence or disorder at the time of the lynching?

Mr. SANFORD. I object to the question as calling for the opinion of the witness on a matter in which opinion evidence is not competent.

By Mr. PRITCHARD:

Q. Was there any public demonstration that night that indicated any outbreak or disorder?

A. None, to my knowledge. I know of none.

Mr. PRITCHARD. You may cross-examine.

The WITNESS. I will have to turn around, so I can get my other ear to you.

Cross-examination by Mr. SANFORD:

Q. What duties do you perform in your store, Mr. Nicklin?

A. Anything that comes up, sir.

Q. What did you do the day of the lynching, do you remember? Were you at your store, do you remember?

A. The night of the lynching?

Q. No; the day.

A. I was in the store all day; yes, sir.

1863 How closely did you follow the Ed Johnson case? How much interest did you have in it?

A. I think I followed it pretty closely, but it was all from hearsay. If you will allow me, I will tell you why it is hearsay. I went to the court-house and I could not get in, and I watched for the papers, and listened to what my friends told me. I was interested in the case from the fact that my particular and bosom friend was foreman of the jury. That is what took my interest, and the interest of the whole town—Amos T. Hooker, a man above reproach and a man whose word would go with me.

Q. His character is not in question in this case.

A. That is why I was taking that interest in it. I could not get in there in person.

Q. You could not get in there in person?

A. There were too many there.

Q. Then Johnson was convicted and sentenced to be hung?

A. He was convicted by that jury, and the judge sentenced him to be hung.

Q. The public excitement subsided because they thought he was going to be hung in due process of law?

A. Yes.

Q. And his attorneys, the men who represented him, decided it was not advisable to appeal. Is not that the fact?

A. That is what satisfied me.

Q. They did not appeal?

1864 A. They had a consultation and agreed that it was not best to appeal.

Q. Where was he taken; where was he put; what became of Johnson? Was he turned loose or put in jail?

A. He was put in jail; I do not know just where.

Q. Where was he put in jail?

A. I think in the Hamilton County jail. I am not sure.

Q. Where did he stay; how long did he stay in the Hamilton County jail?

A. I don't know. I don't remember that, sir.

Q. You do not remember that?

A. No, sir.

Q. You do not remember where he went, if he went anywhere?

A. No, sir.

Q. Do you remember what was the next step that was taken in the case?

A. No, sir; I do not, sir.

Q. These attorneys who had decided not to appeal were all white lawyers of this city, were they not?

A. They were all gentlemen, and all lawyers.

Q. White lawyers?

A. Yes, sir.

Q. Did not one of them publish a card in the paper—you say you got your information from the paper—in which he gave as one of their reasons for not wanting to appeal, that they were con-

1865 vinced he would be lynched if he was not hung by law?

A. I never saw it.

Q. If that occurred you did not see it?

A. I did not see it.

Q. You do not know about that?

A. No.

Q. Then did not two negro attorneys of this city appear before Judge McReynolds and ask to intervene in the case to take it up to the Supreme Court? Do you remember that?

A. I remember hearing of it.

Q. Did they not reflect upon the former attorneys in open court and say that they had abandoned the case, and was that not published in the newspaper?

A. It might have been. I never have seen it but I heard it.

Q. Did not that sort of action tend to inflame public opinion? Did it not tend to inflame public opinion?

A. I would not think so, coming from that source.

Q. You do not think there was any race feeling?

A. I do not think there would be any cause for those men getting up in court——

Q. I do not mean that there was any cause for it, but would not the fact that they did that tend, in your opinion, to cause race feeling?

A. I do not think it would. In my personal opinion it would have no effect.

Q. What step was next taken? What did Judge McRey-
1866 nolds do when they asked for an appeal? What became of that?

A. I do not know just how that was.

Q. Did he grant an appeal or not?

A. I do not think Judge McReynolds granted an appeal, but I really do not know.

Q. Did they take this case up any place, do you remember?

A. The paper said the case was taken before the U. S. judge.

Q. Did they take it before the supreme court of the State of Tennessee at all?

A. I don't know.

Q. What is your recollection about that?

A. I don't know. I don't remember the details.

Q. I am not asking, merely, what you know, but what you recollect from reading the newspapers?

A. I don't remember.

Q. State what you recollect.

A. I don't remember.

Q. You do not recollect what was done?

A. No, sir.

Q. And of course you do not recollect the effect that had on the public mind, because you do not recollect what was done?

A. No, sir.

Q. Then it was taken before the U. S. court, you say. What court?

1867 A. Judge Clark.

Q. Where was that?

A. At Chattanooga.

Q. Over here before Judge Clark, here in Chattanooga?

A. Yes.

Q. Did they take Ed Johnson out of jail?

A. I do not know. I never saw him in my life.

Q. You do not remember from the papers whether he was taken out of the jail and brought up to the court-house?

A. No, sir; I did not read in the papers that he had been.

Q. You remember he was brought before Judge Clark, and the trial was before Judge Clark?

A. I read that in the papers.

You read in the papers that he was brought before Judge Clark?

A. I read Judge Clark's decision. I didn't read about the trial. There must have been——

Q. I did not mean the trial, but the decision by Judge Clark. The decision was given in Chattanooga, but you do not remember whether they had Ed Johnson out of jail or not?

A. No, sir.

Q. You do not know whether he came before Judge Clark?

A. No, sir.

Q. What was done after Judge Clark got through with him? Do you remember what Judge Clark did about it?

1868 A. I do not. There was some sort of a stay, but I don't remember it.

Q. Do you remember how long that was before he was lynched?

A. No, sir.

Q. The public all the time thought he was going to be hung on the day fixed, did they not?

A. I suppose they did. I know the public was perfectly quiet. I heard nothing about it and supposed that at the time set the execution would take place.

Q. That is one of the reasons the public was quiet, is it not?

A. Yes.

Q. That is the main reason, as a matter of fact, is it not?

A. Yes, sir.

Q. You read in the papers that they were fixing the gallows and getting everything ready to hang him on the day fixed?

A. I didn't read it in the paper.

Q. But you understood that was the fact?

A. I don't remember about the gallows, or anything about it.

Q. Do you remember what happened after Judge Clark got through with it?

The COMMISSIONER. The witness will have to answer. The stenographer can not put it down when he shakes his head.

1869 By Mr. SANFORD. You do not remember what occurred after that step?

A. No, sir.

Q. Do you remember whether any further steps were taken before the lynching, and by whom?

A. Legal steps?

Q. Yes.

A. No, sir.

Q. You do not remember?

A. I don't remember what they were.

Q. Or who took them, or when it was?

A. Before the lynching we could catch from the papers that the attorneys had appealed to the Supreme Court of the United States, and gone to Washington.

Q. What attorneys?

A. Capt. Shipp and his deputies would have to go. I got that information, but nothing definite.

Q. You had information that the attorneys for Johnson had gone to Washington, and that Capt. Shipp and his attorneys would have to go?

A. That the case would be taken, you know, to Washington.

Q. Do you remember anything about Capt. Shipp's attorneys going?

A. No, sir.

Q. What lawyers took Johnson's case to Washington?

A. I havn't any idea.

1870 Q. You have not any recollection, have you?

A. No, sir; I don't know.

Q. How long was that before the lynching?

A. I could not tell you just how long.

Q. Did the Supreme Court ever decide that case? Did they ever decide that question that was taken there? (A pause.) The Supreme Court—did it act in the matter?

A. Decide the Johnson case? I don't think they have decided it yet. I don't know what action they took.

Q. You do not know what action they took at all?

A. No.

Q. You are quite deaf, are you not?

A. On one side.

Q. You are quite deaf, and the result is that ordinary conversation is not as distinct to you as to other people?

A. Very little will skip me, if I look at you.

Q. If I get right up close and talk loud?

A. You don't have to get close.

Q. And do not have to talk loud?

A. No, sir.

Q. Do you not have to turn one side so as to get one ear to me to hear my questions?

A. Yes, sir; that is right.

Q. You do not think I am talking in a loud voice?

A. Not very.

Q. It is not perceptible to you, if I am?

1871 A. If you are.
Q. I say, if I am.
A. If you are.
Q. Is your place that they call "The Nicklin Club," a place, in your judgment, where people that were planning a lynching would go and publicly discuss it?
A. No, sir.
Q. You think not?
A. No, sir.
Mr. SANFORD. That is all.
Mr. PRITCHARD. That is all we can do before dinner.

A recess was thereupon, at 11.45 o'clock a. m., taken until 2 o'clock p. m.

1872 AFTER RECESS.

The hearing was resumed at the expiration of the recess.

F. H. DOWLER, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Where do you reside?
A. Over the union passenger depot, Chattanooga.
Q. How long have you resided in Chattanooga?
A. Twenty-seven years.
Q. What is your business?
A. Agent for the Nashville, Chattanooga & St. Louis Railway.
Q. Do you know the defendant, Jeremiah Gibson?
A. Yes, sir.
Q. How long have you known him?
A. About twenty-five years.
Q. Do you know his general character?
A. Yes, sir.
Q. Is that general character good or bad?
A. I consider it good.
Q. From that general character is he entitled to full faith and credit on his oath?
A. Yes, sir.
Q. Do you know the defendant, Capt. J. F. Shipp?
1873 A. I do.
Q. How long have you known him?
A. Something over twenty years.
Q. Do you know his general character?
A. Yes, sir.
Q. Is that general character good or bad?
A. Excellent.
Q. How long have you been connected with the Nashville, Chattanooga & St. Louis Railway?

A. Eighteen years.

Q. Are you pretty generally acquainted in the city of Chattanooga?

A. Yes, sir.

Q. Are you familiar with the habits and sentiments of the people here, and their manner of life, and so on?

A. Reasonably so; yes, sir. I think so.

Q. Were you here, Mr. Dowler, during the period commencing with the arrest of Johnson on the charge of rape, in January, 1906, and down to the time of his lynching, on March 19th, 1906? Were you in Chattanooga during that period?

A. Yes, sir.

Q. I will ask you to state whether, at the time of the first attempt to lynch Johnson there was any public excitement—at the time of the commission of the rape and his arrest, and up to the time of his trial?

1874 A. Yes, sir; there was considerable excitement. It was talked about more or less on the streets.

Q. Was it observable? Could you see and know there was a state of public excitement? Did you hear the matter discussed?

A. I heard it discussed frequently, yes.

Q. Now I will ask you at what period, if at all, that excitement subsided and disappeared, or ceased to be manifest in any way?

A. The excitement, from my observation, subsided after the case had been taken up.

Q. After his conviction?

A. After he was convicted; yes, sir.

Q. From the time of the conviction of Johnson here in the courts, did you observe any evidences of public excitement from that time on to the time of his lynching?

A. No, sir.

Q. At the time of the actual lynching, March 19th, 1906, and immediately prior to that time, state whether or not you observed any evidences of intense public excitement, or anything indicating that a lynching might be expected or was imminent?

A. No, sir; I did not. It came as a surprise to me.

Mr. SANFORD. I object to the witness' statement as to whether he was surprised or not, as immaterial and incompetent.

By Mr. PRITCHARD:

Q. Did you hear any talk of it?

1875 A. No, sir.

Q. Did you see any evidences of it, or of any conspiracy or of any design to lynch Johnson?

A. I did not.

Q. When did you first hear of the lynching?

A. I first heard of the attempt while I was attending a meeting of the chamber of commerce that night.

Q. That was the first attempt to lynch Johnson?

A. That was the night he was lynched.

Q. You were attending a meeting of the chamber of commerce?

A. Yes.
Q. Where?
A. On Broad street, under the Read House.
Q. Did you hear of it that night?
A. Not until the announcement was made while the meeting was going on.
Q. That was after the lynching had occurred, was it?
A. No, sir. Mr. M. B. Ochs came to the chamber of commerce rooms and announced that an attempt was being made.
Q. That was the first——
Mr. SANFORD. I object to leading the witness on that point. I object to any leading question.
Mr. PRITCHARD. I do not care anything about it. I am not trying to lead Mr. Dowler. It is wholly immaterial. You may cross-examine.

1876 Cross-examination by Mr. SANFORD:

Q. Now, Mr. Dowler, what is your connection with the railroad?
A. I am agent.
Q. What are the duties that devolve upon you?
A. My duties are that I have charge of both yards and the union passenger station, as well as the freight station.
Q. You have charge of the passenger and freight stations?
A. Yes, sir.
Q. What does that duty require you to do? Do you have charge of and supervision of the men and their employment?
A. Yes, sir; general supervision of the yards and shops—all of the departments at Chattanooga.
Q. You say you were at a chamber of commerce meeting on the night Johnson was lynched?
A. I was there the night Mr. Ochs made that announcement.
Q. You have stated that was the night of the lynching, have you not?
A. I was under the impression that it was, but I would not be positive of that.
Q. Do you know whether it was the night of the attempted lynching or the night of the lynching?

1877 A. I could not state positively, except that Mr. Ochs came there and stated that an attempt was being made to lynch this darkey, Ed Johnson.
Q. You do not know when it was?
A. I can not state the date; no, sir.
Q. But whenever that was, you have stated it was a surprise to you?
A. Sir?
Q. It was a surprise to you, you have stated?
A. It was a surprise to me when he was lynched.
Q. When Mr. Ochs came there and made that statement that there was an attempt to lynch him, that was a surprise to you?

A. I was surprised to hear he was being lynched; yes, sir.

Q. Or that the attempt was being made?

A. Yes, sir.

Q. And you are not prepared to say whether that was the first attempt at lynching or the last attempt that succeeded, are you?

A. I could not state positively.

Q. As a matter of fact, do you remember the date when the first attempt to lynch him occurred?

A. No, sir; I do not.

Q. Can you give it approximately?

A. I do not know that I could. I only remember it in a general way, just the general circumstance.

1878 Q. Did you follow this Ed Johnson case very closely or not?

A. Nothing except through the newspapers and from my observation in passing around the streets.

Q. I say, did you follow it very closely or not?

A. I did not take any deep interest in it; no, sir.

Q. You did not take any especial interest in it, did you?

A. No, sir.

Q. Do you remember how long it was after he was arrested before the first attempt at lynching occurred?

A. No, sir; I could not state.

Q. Do you remember how long after the first attempt at lynching it was before he was tried?

A. No, sir.

Q. Do you remember how long the trial lasted?

A. I can not state.

Q. It did not make impression enough on you?

A. No, sir; it did not.

Q. Do you remember on what date he was sentenced?

A. No, sir; I could not give any dates. I paid no *app*ention.

Q. Let us keep on and see right along what your recollection is about the whole transaction. Let us go right through it. What was done with him when he was convicted and sentenced; do you remember that?

A. He was taken to Knoxville, is my recollection.

1879 Q. When was he brought back from Knoxville?

A. I don't remember the date, sir.

Q. You can not remember. Do you remember what the next step that was taken in his defense was?

A. As I remember it, the judge appointed a committee of lawyers to review the case, and they decided not to appeal it, and then the colored lawyers took the matter up to the Supreme Court. I do not remember the dates.

Q. Did they take it up with Judge McReynolds before, in his court?

A. That is my recollection.

Q. With what result?

A. That he declined, refused it.

Q. Did they take it to the state court, or not; do you remember?
A. I can not state positively about that.
Q. Then what was the next step that was taken?
A. I remember the appeal was taken. The case was taken before the Supreme Court by Judge Shepherd.
Q. Before what Supreme Court?
A. The United States Supreme Court.
Q. That was the next step you remember, was it?
A. I don't know how long it was.
Q. How long was it before the lynching?
A. I couldn't state how long, sir.
Q. When was the decision of the Supreme Court announced?
A. I don't remember any of the dates, sir.
1880 Q. You do not remember?
A. No, sir.
Q. You can not tell how long that was announced before the lynching?
A. No, sir.

PEMBROKE A. BRAWNER, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Where do you live?
A. In this city, sir.
Q. How long have you been a resident of Chattanooga?
A. Since 1874, I think.
Q. In what business are you engaged?
A. The manufacturing business.
Q. What is your concern?
A. The Ross-Mehan Foundry Company.
Q. Where is it situated?
A. On Carter street, near Montgomery avenue.
Q. Is that in the southern part of the city?
A. Yes, sir.
Q. Is that a portion of the city where there are many manufacturing establishments?
1881 A. Yes, sir; that is the center of the manufacturing district.
Q. I will ask you if that is a portion of the city in which most of the men who work in foundries, machine shops, and factories like that reside?
A. Yes, sir.
Q. How many people do you employ?
A. About 450.
Q. How long have you been engaged in that business, Mr. Brawner?
A. Since March, 1889.
Q. What kind of work do these men do?

A. They are iron workers.
Q. Moulders?
A. Moulders; yes, sir.
Q. And men of that type?
A. Yes, sir; malleable castings.
Q. Were you engaged in that business at the time of the lynching of this negro, Johnson?
A. Yes, sir.
Q. Were you in Chattanooga and in charge of this establishment during the period beginning with the arrest of Johnson, and ending with his lynching?
A. Yes, sir.
Q. I will ask you to state, Mr. Brawner, whether prior to this lynching in March of last year, you saw, immediately prior to
1882 that date, or for several days before, or observed any evidences of excitement or of the prevalence of any mob spirit, and collections of people or anything of the sort, indicating that a mob was about to convene, or that anything unusual was about to take place?
A. That is, in the March lynching, the actual lynching?
Q. Yes.
A. No, sir; it seemed to me as though all the excitement had blown over. Up to the time of the trial there was a good deal of excitement, but after the trial and conviction it seemed to have died down.
Q. Up to the time of the trial, from the arrest of Johnson down to the time of the trial, state whether or not this existence of excitement was obvious and manifest, and whether you could see and observe it?
A. Yes, sir; it was.
Q. How was it manifested?
A. One incident was that you would see every one going along the streets with both hands down in their pocketes. That was a pretty good indication. Every man was prepared.
Q. State whether or not people would gather together, workingmen especially, in groups and clumps, and whether it was the subject of discussion among them.
A. It was something that could be felt more than described. You simply felt it in the air. The air seemed surcharged with excitement.
1883 Q. That continued up to what period?
A. Up to the trial and conviction.
Q. Do you know what date that was?
A. No, sir; I do not. I think it was in the latter part of——
Q. I will inform you that it was in——
Mr. SANFORD. I object to informing the witness.

By Mr. PRITCHARD:

Q. I will inform you that that is not a matter that is in issue in this case, and that it is agreed on all sides that it was on the ninth day of February.
Mr. SANFORD. I object to the statement to the witness, as refreshing his recollection by counsel.

Mr. PRITCHARD. We have agreed upon those things, have we not?

Mr. SANFORD. It is a question of what this witness remembers about it.

Mr. PRITCHARD. I am not asking him to fix the date.

Mr. SANFORD. You have stated it; you are not asking it now, of course.

By Mr. PRITCHARD:

Q. I ask, assuming that to be the date, assuming the ninth of February to have been the date of the conviction, and assuming that to be the correct date, whether, after that date, the ninth of February, you saw any evidences of any excitement, or whether any was obvious to you?

A. I saw no excitement, sir, after the trial and conviction.

1884 Q. No matter what date it might be?

A. It matters not what date; no, sir.

Q. Now, I will ask you whether you heard any discussion of it, or whether the crime itself, or Johnson, or anything connected with Johnson, was the subject of discussion after that time?

A. So far as my personal observation goes, sir, it was a closed chapter.

Q. How long have you known Captain Shipp?

A. About twenty years, I should judge, sir.

Q. Do you know his general character in the neighborhood in which he lives?

A. Yes, sir.

Q. Among the people with whom he has lived?

A. He always has lived in the section of town in which I live.

Q. Do you know his general character?

A. Yes, sir.

Q. Is that general character good or bad?

A. Good.

Cross-examination by Mr. SANFORD:

Q. Why was it a closed chapter in your opinion when he was convicted?

A. The law had vindicated itself, Mr. Sanford.

Q. Was it felt in the community that he would be executed at the time he was sentenced? He was sentenced to execution in

1885 thirty day, was he not?

A. It was simply taken for granted that the law had been able to assert itself and to vindicate itself so far and would continue to.

Q. That was taken for granted?

A. It was taken as a matter of course that the law would be carried out.

Q. There was no doubt in the minds of the community that he would be executed in accordance with the judgment of the court?

A. Whatever the court in its wisdom saw fit to do.

Q. The court had sentenced him?

A. Yes.

Q. And there was no doubt in the mind of the community that he was to be executed?

A. I would hardly put it that strong. It seemed that the law had vindicated itself and the people were satisfied.

Q. Did you hear any doubt suggested that he would be executed in the date fixed after his conviction?

A. No, sir; I do not know that I heard the matter mentioned after the conviction. It seemed to be just simply dropped.

Q. He was sentenced and it was announced in the papers that he was sentenced and was to be hung on a certain date?

A. As I remember it, after the sentence there was a motion for an appeal or some action taken. Finally the appeal question was dropped and the matter was permitted to

1886 Q. And he was sentenced?

A. Everybody considered that as conclusive and final.

Q. And he was sentenced to be hung on a fixed date, was he not; and it was announced in the papers?

A. As I remember it.

Q. It was considered a settled matter, and there was no further excitement.

A. It was considered a settled matter, and there was no further excitement.

Q. What became of Johnson?

A. It was currently reported, as I remember it, that he was in Knoxville.

Q. So there was no apprehension of lynching in Chattanooga during the time he was in Knoxville, was there?

A. After the conviction the mob spirit seemed to have died out entirely.

Q. I asked you about the time he was in Knoxville. There was no apprehension and no cause for apprehension of any lynching in Chattanooga, if it was known he was in Knoxville?

A. No, sir.

Q. So the cause or the occasion for any lynching and the opportunity for any lynching had ceased when he was taken to Knoxville. Is not that true?

A. Yes, sir.

Q. What were the subsequent proceedings in that case after these attorneys had decided not to appeal? What were the subsequent proceedings, if you recall?

1887 A. As I remember the case he was kept in Knoxville for a while and finally brought back to Chattanooga.

Q. What proceedings were taken in his behalf to reopen the case, if any?

A. I think it was then carried to the United States court—carried before Judge Clark.

Q. Was it carried to the state court, or attempted to be carried?

A. I only know what the newspapers stated.

Q. I asked for your recollection.

A. The newspapers, I believe, stated that an attempt would be made for an appeal, and finally the negro lawyers carried it before the United States court.

Q. Was the statement that they were intending to take it to the state court, or that they had attempetd to take it the the state court? Do you remember that?

A. I really do not recall the circumstances.

Q. You do recall that it was said the negro lawyers would take it to the Federal court?

A. Yes, sir.

Q. Did they take it to the Federal court, as you recollect?

A. As I remember, I saw the statement in the paper that Judge Clark had assumed jurisdiction.

Q. What did he do?

A. He granted them the right of appeal, or something of the kind.

Q. That is your recollection?

1888 A. As I remember it.

Q. How long was that before he was lynched?

A. The first motion, I think, was a week or ten days, as I remember it.

Q. A week or ten days?

A. Yes, sir.

Q. Then did the Supreme Court grant that appeal, or what became of it then?

A. I really was not enough interested in the case to follow it that close, after the first trial.

Q. You think Judge Clark granted the appeal about a week or ten days, I believe your language was, before the final lynching?

A. Yes.

Q. Did that mean there was to be a delay of the case? Was it to go to the Supreme Court then?

A. I suppose so.

Q. In your judgment would you say that the fact that there was to be delay and uncertainty, and that the date that had been fixed for the execution might not be the date of the execution, did not raise any danger of lynching?

A. I did not hear the question even mentioned, Mr. Sanford.

Q. You did not hear it?

A. No, sir.

Q. After Judge Clark granted the appeal, a week or ten days before?

1889 A. No, sir; the excitement, as I remember it, died out at the trial.

Q. And although it was reopened by the fact that there was to be an appeal a week or ten days before, according to your recollection, it created no further excitement?

A. The vindication of the law seemed to satisfy the community.

Q. That is your recollection about it?
A. Yes.

Redirect examination by Mr. PRITCHARD:

Q. That is your statement of the condition of the public sentiment?
A. Of the public sentiment; yes, sir.
Q. And you recollect what the sentiment was?
A. Yes, sir.
Q. Mr. Sanford has assumed, or has asked you about a delay, and about the intervention of the Federal court. I will ask you to state whether you heard any man, woman, or child make any remark that led you to believe that that matter cut any figure at all, or made any danger, or put Johnson in any danger at all of being lynched?
A. I do not think I heard the question mentioned.
Q. By anybody in the city of Chattanooga?
A. No, sir.
Q. At any time?
1890 A. No, sir. I was on the streets the evening of the lynching and heard nothing of it.

Recross-examination by Mr. SANFORD:

Q. Were you reading the papers during that time?
A. Yes.
Q. Did you read the editorial in the Chattanooga Times of March 12th in which reference was made to the unfortunate hearing before a federal authority and counseling public moderation in the emergency? You did not read that, did you?
A. If I did I do not recall it.
Q. You do not recall anything of that sort?
A. No, sir.
Q. Did you see, under date of March 16th, after stating that certain negro attorneys had gone to Washington to get an appeal, this statement in the Chattanooga Times in an article entitled, "Now up to last court. Case of Ed. Johnson nearing its last stage. People here are decided anxious as to whether Johnson is to suffer death for his crime next Monday or escape for an indefinite period by reason of intervention of the court at Washington. More unrest on the subject exists than was anticipated when Johnson was brought back to the county. During the recent days of suspense as to his execution the desire for information has been feverish and telephones at localities where information has been thought to be obtainable have been kept busy by inquirers." Did you see anything of that sort in
1891 the papers?
A. I don't know whether I saw that individual article. I saw something of that kind in the papers at the time, but did not hear it outside of the papers.
Q. Did you see in that article a statement that a meeting of negroes had been held Monday night at which six hundred negroes were present, and that a fund had been raised to defend Johnson?
A. I knew of that meeting.

Q. You think that did not have any tendency to increase the feeling, or to make any danger of lynching?

A. I did not hear the question even mentioned among our workmen, or among my friends.

Q. How many of your workmen did you talk to?

A. I was out through the works, and had there been any excitement I think it would have manifested itself, sir.

Redirect examination by Mr. PRITCHARD:

Q. If some newspaper reporter did give expression to the utterances Mr. Sanford has read in his question, as I understand you, you do not agree that such was the condition at all in Chattanooga at that time?

A. I used to be a newspaper reporter myself, sir, and I know how those things are.

Recross-examination by Mr. SANFORD:

1892 Q. You think you had better opportunities for observation than the newspaper reporters did; is that your opinion?

A. No, sir; I do not say that, but they were more keenly alive to hunt up information of that kind than I was.

Q. Do you think they would have any more desire to tell an untruth about it?

A. Not at all.

Q. And they would have the best opportunities for knowing it?

A. Still, they would like to have the report.

Q. They would have the opportunity? That is their business, inquiring into these questions?

A. That is their business.

By Mr. PRITCHARD:

Q. The' "rassle" around with a sensation a good long time, do they not?

A. I used to.

CHARLES HERRON, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. LYNCH:

Q. How long have you lived in Chattanooga?

1893 A. About eighteen years.

Q. You came here about eighteen years ago?

A. From Cincinnati, yes, sir.

Q. Do you know Capt. Shipp, the defendant?

A. Yes, sir.

Q. How long have you known him?

A. I have known him ever since I have been here.

Q. Do you know his general character?

A. Yes, sir.

Q. Is it good or bad?

A. I think his character is A-No. 1. I do not think there is any better in Chattanooga.

Q. Do you think you would believe him on his oath from that general character?

A. Yes, sir.

Q. What about his character for peace and good order?

A. It has always been the very best, to my knowledge.

Q. What business are you in here?

A. The foundry business.

Q. How many men do you have in your employ at both of your places?

A. About three hundred and fifty.

Q. I will ask you if you mix and mingle with your men?

A. Yes, sir; I am right among them all the time.

Q. What character of workmen are they? What work do they do?

A. I have all kinds. I have laborers, high-class mechanics, machinists, moulders, draughtsmen, pattern makers——

1894 Q. I will ask you if you remember the circumstance of Ed. Johnson's alleged assault on the young lady here in Chattanooga, and his subsequent trial for that crime?

A. Yes, sir.

Q. I will ask you whether there was or was not a great deal of excitement and ill feeling manifested toward him about the time he was said to have committed the crime and was arrested?

A. Yes, for a week or so there was a great deal.

Q. I will ask you if you remember the circumstance of his trial and conviction for that crime?

A. Yes, sir.

Q. After the trial and conviction did that excitement and bitter feeling continue, or did it cease to be a matter of comment?

A. No; I think it blowed over considerable.

Q. You remember the fact of his being lynched here, do you?

A. Yes, sir; though I was not in town at the time.

Q. I will ask you if you were in the city the day of the lynching?

A. No, sir; I left the morning of the lynching for Washington.

Q. You left that morning?

A. Yes, sir.

Q. I will ask you whether or not you had been here previous to that time?

1895 A. Oh, yes.

Q. Up to that morning I will ask you if you heard any threats or any discussion of the case, or saw any excitement or any manifestation of any intention to mob him, up to the time you left here that morning?

A. No, sir; nothing.

Q. I will ask you if you saw anything from which you apprehended any mob violence at that time?

Mr. SANFORD. I object to the question, and to the answer that may be given as to the apprehension of this witness, as incompetent.

By Mr. LYNCH:

Q. From your mixing with the people of Chattanooga, and from your mixing and mingling with our employes there, I will ask you if you heard anything that gave you any impression that there would be another attempt to lynch this man?

A. No, sir.

Mr. SANFORD. I object to that statement as to this witness' impression from what he heard, and any impression on his own mind.

By Mr. LYNCH:

Q. I will ask you if the case was being discussed at that time; if men were talking about it or discussing it at all at that time?

A. No, sir; I did not hear anything of the kind.

1896 Cross-examination by Mr. SANFORD:

Q. When did you leave for Washington?

A. On the morning that this lynching took place.

Q. You were not out at your works that day?

A. Yes, sir.

Q. How long?

A. The day of the lynching?

Q. Yes.

A. I was there until 9 o'clock, I think. I went from there to the train.

Q. How long were you at your works?

A. From about half past 6 to about 9, or a little after.

Q. Do you remember whether you read the morning paper before you went out there?

A. No, sir; I did not. I did not have time.

Q. You were busy, getting ready to go?

A. Yes.

Q. What were you doing that morning; getting ready to get off?

A. Yes, sir.

Q. You had not read the morning paper?

A. No, sir.

Q. Then you did not know anything about what action, if any, the Supreme Court had taken in the matter when you left?

A. Yes, I believe I did.

1897 Q. Who did you hear it from?

A. I heard it discussed, I think, in the office.

Q. Who did you hear discussing it?

A. Some of the boys in the office. I couldn't tell you just now, who.

Q. You had not seen it in the paper yourself?

A. No, sir; I did not.

Q. Had you followed the Ed. Johnson case very closely?

A. No, sir.

Q. Had you been very much interested in it?

A. No, sir.

Q. Do you remember when he was arrested?

A. Yes, sir; I remember when he was arrested.
Q. What time was it—what date?
A. I couldn't tell you the date.
Q. Do you remember how long it was after his arrest before the first attempted lynching?
A. I couldn't tell you that, either.
Q. Do you remember how long it was, then, before he was tried?
A. I couldn't tell you that, either.
Q. Do you remember how long the trial lasted?
A. No, sir; I couldn't tell you that.
Q. Were you at the court-house during the trial?
A. No, sir.
Q. Do you know what steps were taken to protect him during the trial, and to guard the jail at nights? Do you know anything about it?
1898 A. No, sir.
Q. Do you know what steps were taken with reference to appealing his case, and what lawyers represented him?
A. No, sir; I do not.
Q. Do you know what they did, and what courts took it up, and when they took it up?
A. I knew they took it to the Supreme Court.
Q. When did you hear that?
A. I couldn't tell you just the dates.
Q. How long before the lynching occurred did they take it to the Supreme Court?
A. I could not tell you positively.
Q. What is your best recollection?
A. Oh, it was probably four or five days.
Q. What did the Supreme Court decide?
A. I couldn't tell you that either; only I know that he was turned over to the sheriff, and we looked upon it then that he was safe.
Q. When did you know he was turned over to the sheriff?
A. I declare I couldn't tell you. I am a very busy man, and I can not give you the dates.
Q. It was not in your line as a manufacturer at all?
A. No, sir.
Q. That case never had been on your mind?
A. No, sir; never.
Q. You were not making it your business to inquire as to the state of public feeling about that case?
1899 A. No, sir.
Q. From the start?
A. No, sir.

Redirect examination by Mr. LYNCH:

Q. I will ask you if, from your long residence here in Chattanooga, and your acquaintance with the mass of the people here, laboring people and other people, you considered that the fact that the federal court took jurisdiction of the case increased this man's danger?

Mr. SANFORD. I object to the witness's opinion on a question of that sort as entirely incompetent.

The WITNESS. No, sir. I consider that it was a safeguard to the prisoner; that they would not dare to do anything against the United States Government.

WILLIAM E. LOVE, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. LYNCH:

Q. How long have you lived in Chattanooga?

A. About twenty years.

Q. State whether or not you moved here from Chicago about that time.

1900 A. Yes, sir; in 1887.

Q. What business are you in?

A. The manufacturing business—stoves, castings, and cornice work; things of that kind.

Q. What is the name of your company?

A. The Mountain City Stove & Manufacturing Company.

Q. You are the president of that company?

A. Yes, sir.

Q. I will ask you whether or not you have your family here in the city?

A. Yes, sir.

Q. And also a store on Market street?

A. Yes, sir.

Q. About how many men do you work?

A. In both places?

Q. Yes.

A. Between 70 and 85; sometimes probably as many as 100. About 75, though, I would say.

Q. What character of workmen are those?

A. Cornice makers, roofers, stove-plate makers, smelters, of iron——

Q. Skilled mechanics?

A. Yes, sir.

Q. I will ask you whether or not you mix and mingle with your men?

A. Yes, sir.

Q. You come in personal contact with them?

1901 A. Yes, sir.

Q. How long have you known Captain Shipp?

A. Since 1887; since I came here.

Q. Do you think you know his general character?

A. I think I do.

Q. Is it good or bad?

A. I would call it good.

Q. Would you believe him on oath, from that general character?
A. Yes, sir.
Q. What about his character and reputation for peace and good order? Is that good or bad?
A. It is good.
Q. Do you remember the circumstance of Ed Johnson being charged last year with rape on a young woman here in Chattanooga?
A. Yes, sir.
Q. And his subsequent trial and conviction for that offense?
A. Yes, sir.
Q. I will ask you whether or not there was a great deal of excitement and bitter feeling about the time of his arrest, and up to the time of his trial?
A. Yes; there was a great deal of excitement about the time that he was arrested.
Q. Did the public generally at first take a great interest in the matter and discuss it freely here in the city?
1902 A. Yes, sir; at first they did.
Q. They did at first. Did that continue after the trial and conviction or not?
A. No, sir; I heard very little of it after he was convicted.
Q. About the time the case was appealed to the Supreme Court of the United States, just prior to his being lynched, I will ask you whether there was any excitement here in Chattanooga at that time?
A. I never heard of any.
Q. Was the matter being discussed at that time or not?
A. I can not remember that I heard it discussed or not. I know it was not around our place of business. In fact, I myself was very much surprised when I read the paper next morning and heard of the lynching.
Mr. SANFORD. I object to the witness' statement as to his surprise next morning, as incompetent and irrelevant.

By Mr. LYNCH:

Q. Was there anything in the comment that you heard that day, or any discussion among your men or among the people in Chattanooga with whom you came in contact in your store or elsewhere, to cause you to apprehend that there would be a mob, or any lynching, or any violence?
A. No, sir.
Mr. SANFORD. I object to the question as calling for the
1903 opinion of the witness on a matter as to which opinion evidence is not competent; and on the ground of his own apprehension being entirely irrelevant.

By Mr. LYNCH:

Q. I will ask you if you heard any comment at all on the subject of his being lynched that day or that night?
A. No, sir.

Q. I will ask you if the fact that that case was appealed to the Supreme Court of the United States, and the Supreme Court of the United States and the federal court took jurisdiction, caused any apprehension among the people of Chattanooga, so far as you knew, or to your mind would cause apprehension that this man would be lynched?

A. No, sir.

Q. I will ask you if, in your judgment, at the time you considered that that fact of the federal court taking jurisdiction of the case and granting an appeal increased this man's danger?

Mr. SANFORD. I object to the question and to the answer that may be given as incompetent and irrelevant.

By Mr. LYNCH:

Q. Go ahead and answer the question.

A. I consider that he would be safer, because we are sort of afraid of Uncle Sam; and generally the parties that do mob are the bummers, so to speak, and are more afraid of the United States courts than they are of our local courts.

1904 Cross-examination by Mr. SANFORD:

Q. How close attention did you give to the Ed Johnson case?

A. Only in a general way.

Q. Were you particularly interested in it?

A. No, sir.

Q. Did you follow it and discuss it very frequently and watch its proceedings and the different steps in it?

A. Only a short while. I probably talked about it just after this thing occurred.

Q. Do you remember how long it was after he was arrested before he was tried?

A. No, sir.

Q. Do you remember how long the trial lasted?

A. I do not know exactly.

Q. Do you know what precautions were taken during the trial to guard him from the public—I mean from public excitement; from danger?

A. Only from hearsay.

Q. Do you know from hearsay what was done?

A. Well, at the time, I knew the sheriff had to move him out of the county, and carried him to Knoxville or Nashville, or somewhere else.

Q. When he came back for trial, do you know what occurred? Do you know what they did during the trial about protecting him?

A. No, sir; I do not.

1905 Q. If there was a state of uneasiness that existed that they had to keep the court-house guarded, and extra guards at the jail, and special deputies, you never knew anything about that?

A. I might have seen policemen, or some one, stationed at the corner of the court-house one day.

Q. Do you remember anything else?

A. No, sir.

Q. Whatever else was done about it you do not remember?

A. No; I did not come to the court-house or near it at night.

Q. Do you know of the reason that was given by one of his counsel, or one of his attorneys, why they did not appeal his case? Do you remember that?

A. I can not say that I do. I do not remember that.

Q. Do you remember seeing a signed statement by Mr. Thomas in the paper next day after he was sentenced; in which he stated that one of the reasons that all the lawyers had agreed on was that he would be lynched if he was not executed by law, and that an appeal would be useless? Do you remember that as one of the reasons?

A. I remember something by Mr. Thomas; but I do not remember the exact words.

Q. Do you remember what it was?

A. No, sir.

Q. Do you remember what was done with Johnson then?

A. No, sir.

1906 Q. Do you know what was the next step that was taken in the case? Do you know what courts they tried to take it to, if any?

A. No; I do not think I do.

Q. You have been asked about an appeal to the United States Supreme Court. Do you know whether it was ever appealed to the United States Supreme Court?

A. Only from the newspaper.

Q. When was it appealed?

A. I could not tell you that.

Q. How long was it before he was finally lynched; and did the Supreme Court ever make any decision in regard to it; or make any order about it? Do you remember that?

A. No, sir; I do not.

By Mr. LYNCH:

Q. I will ask you whether or not you have been living here in the city?

A. Yes, sir.

Q. I will ask you whether or not you have been a constant reader of both the morning and evening papers?

A. Yes, sir.

Mr. LYNCH. May it please the court, we think we can expedite matters greatly by adjourning until to-morrow morning. We are preparing to close up.

1907 Thereupon, at 3.30 o'clock p. m., the hearing was adjourned until to-morrow, Wednesday, June 26th, 1907, at 9 o'clock a. m.

1908 CHATTANOOGA, TENN.,
Wednesday, June 26th, 1907.

The hearing was resumed at 9 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland on behalf of the United States, and counsel for the various defendants.

Dr. P. D. SIMMS, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Are you a practicing physician?

A. Yes, sir.

Q. How long have you lived in Chattanooga?

A. 51 years. I came here in June, 1856. The first day of June, 1856, I came to Chattanooga.

Q. Have you been in practice of medicine ever since?

A. Yes, sir.

Q. Have you been well acquainted here in Chattanooga and are you well acquainted?

A. Yes; I should say so; reasonably well. I have mixed
1909 with the people of Chattanooga for 51 years, as they have come and gone.

Q. You are still in the practice of your profession?

A. Yes, sir.

Q. Have you held any official professional offices? I will confine myself to professional offices.

A. You mean municipal?

Q. Municipal, State, or county?

A. I was for a term of 15 years a member of the state board of health. I for the past year and a half have been city physician of Chattanooga.

Q. Are you city physician now?

A. Yes, sir.

Q. And you have been county physician?

A. No; I was never county physician.

Q. I thought you were. You were living here during the whole of last year?

A. Yes, sir.

Q. Were you in the city during the period from the time of the arrest of this negro, Ed. Johnson, down to his lynching?

A. Yes, sir; I do not think I was out of the city more than a day or two at a time at any time during the year.

Q. And you were engaged in your practice and in your duties as city physician as well?

A. Yes, sir.

Q. Where is your residence and office, Doctor?

1910 A. My residence is out on Fort Wood Hill, on Clark street. My office is at 708 Walnut street.

Q. How far from the jail?

A. A little less than one block.

Q. How long has your office been there?

A. 15 years. I do not remember exactly how long. Before that it was just a few doors south of that.

Q. I will ask you to state, Doctor, whether at the time of the alleged commission of the crime by Johnson, and his arrest for the crime under the charge of rape, there was much public excitement manifested?

A. Yes, sir; there was at the time, quite a good deal.

Q. Do you remember the attempt at lynching which occurred on the day of his arrest?

A. Yes; a sort of demonstration.

Q. I will ask you how long that high state of public excitement continued; up to what period of time?

A. Now, that would be merely a matter of memory, and I would not want to state positively. I think for some weeks probably after that, but I do not remember just how long, there was a feverish condition of the public mind.

Q. At the time of the trial of Johnson in the criminal court here, and at the time he was sentenced, was the excitement still on?

A. I should think so; perhaps it was not as great as it was at the time of his arrest, but there was still an excited condition of the public mind.

1911 Q. I will ask you whether at that time, at the time of the trial, there were any indications of any mob violence; or whether it was a state of excitement and interest growing out of the trial itself?

A. Well, I don't remember of any tendency to the formation of a mob at the time.

Q. From the time of the trial of Johnson and his sentence by the court here—do you remember the date of that?

A. No, sir; I do not.

Q. Assuming it to be February 9th, and assuming that to be the time agreed upon as being the correct date, I will ask you whether after that time there was a state of public excitement—after Johnson's trial and conviction here in the court?

A. No; I think not; not markedly so.

Q. I will ask you, then, whether after Johnson was brought back here, and immediately preceding his lynching, which occurred, say, on the 19th day of March, or the night of the 19th of March, in the interval between February 9th and the time of his lynching on the 19th of March, there was any excitement manifested?

A. I don't remember of any. I suppose the matter was talked over, and something was said about it, but if there was any general excitement about it, it escaped my notice.

Q. At the time of the trial, and the time of the actual lynch-
1912 ing, state whether or not you heard or saw manifested in any way, any mob spirit or disposition to lynch him?

A. I did not.

Q. Did you, on the day of the lynching, or at any time immediately preceding that time, see anything that would indicate or lead any reasonably prudent person to suspect that any lynching was imminent?

A. No, sir; I have not. I have been in the habit at time when such things were threatened—we have had several periods of excitement of that kind—I have often been in conference with Captain Shipp in reference to it, and have always urged upon him, and he has very earnestly seconded the same movement, to——

Mr. SANFORD. I object to any statement of the witness as to the previous conduct of Captain Shipp, and his conversations with him, as incompetent and irrelevant.

The WITNESS. I did not go to Captain Shipp at this time, because it did not occur to me that there was a danger, and that he ought to take any action.

Q. (By Mr. PRITCHARD.) But on previous occasions, when you saw any occasion for it, you say you did see him?

A. Yes; I did.

Q. And on this occasion you did not go to him?

A. No.

Q. Finish your answer, subject to Mr. Sanford's objection, in respect to what Captain Shipp did when you did go to him on these previous occasions?

1913 A. On the previous occasions?

Q. Yes.

A. Often before I would go to him he would have taken steps to send the man away if he was in any danger, and he always very cordially entered into my ideas about the necessity of protecting any man in that condition.

Q. I will ask you whether or not at any time, when you had occasion to confer with him, he showed any dilatoriness in taking active measures for the protection of the man?

A. No, sir; he never did.

Mr. SANFORD. I object to the question and answer, as incompetent and irrelevant.

Q. (By Mr. PRITCHARD.) You say he never did. Where were you on the night of the lynching; do you recall?

A. I was at my residence. I was not at my office that night, and knew nothing of the lynching until I saw it in the paper the next morning.

Q. You were at your residence?

A. Yes.

Q. On Fort Wood?

A. On Fort Wood.

Q. And you knew nothing of it until you saw it the next day?

A. No, sir; I was very much surprised when I saw it in the paper the next morning.

1914 Mr. SANFORD. I object to the testimony as to the witness' surprise, as incompetent and immaterial.

Q. (By Mr. PRITCHARD). I will ask you, Doctor, whether you have spent a good deal of time and given a good deal of attention to the matter of the protection of prisoners, and of prison reform, and matters of that sort?

A. Yes; I have taken a good deal of interest in those things. I was for a number of years a member of the Nashville Prison Congress, and attended its meetings; and it was during my membership of the state board of health that I was chairman of the committee on prisons, and in that capacity I took quite an interest in prison matters.

Q. And you have been active, you say?

A. Yes.

Q. In ameliorating and bettering the condition of prisoners?

A. Yes, sir.

Q. How long have you known Captain Shipp, the defendant?

A. I might miss it four, five, six, or eight years. I have known him ever since he came to Chattanooga. To state from memory, I would say 35 years. It may not have been that long, but it may have been a little bit longer.

Q. You have known him all that period?

A. Ever since he came to Chattanooga.

1915 Q. Are you acquainted with his general character in this community?

A. I think I am.

Q. Is that character good or bad?

A. Good—without a blemish—so far as I know or have any reason to suspect.

Q. State particularly, with reference to his general character for peace, probity, quiet, and good order.

A. Absolutely good, I think. I have always so regarded him and think the community have always so regarded it.

Q. How is it upon the subject of veracity?

A. Unimpeachable, I should say.

Cross-examination by Mr. SANFORD:

Q. Doctor, did you follow the Ed. Johnson case with any particular interest? Did you pay any special attention to it?

A. Oh, not more than I would any ordinary case that produced that much excitement in the community.

Q. Have you any very distinct recollection about the occurrences between the time of Ed. Johnson's first arrest and his final lynching?

A. Repeat the question, please.

Q. Have you any specially distinct recollection in reference to the different occurrences between the time of Johnson's arrest and his lynching—his execution?

A. No; I can not say that I have.

1916 Q. Did you have anything to do with suppressing the first mob, when there was an attempt to lynch him that failed.

A. No, sir; I did not.

Q. Had you gone to Captain Shipp in reference to that?

A. I think I had seen Captain Shipp at the time when the excitement was at its height here, and it was thought that perhaps Johnson had better be sent away. I can not say positively as to that, because I know I have conferred with Captain Shipp very often about things of that kind, and I think I did in reference to Johnson.

Q. You have not any distinct recollection in reference to it?

A. I did not state that.

Q. Do you know whether you went to see him or whether he came to see you on that occasion?

A. No, sir; I do not recollect that, because it was sometimes one way, and sometimes the other.

Q. You have no affirmative recollection on the subject, as I understand you?

A. No, sir.

Q. Do you remember how long it was between the time Ed. Johnson was arrested and the time of the first attempt to lynch him?

A. No, sir; I do not.

Q. Do you remember the date of his first arrest?

A. No, sir; I do not.

Q. Do you remember how long an intervening space

1917 there was between his arrest and his indictment?

A. I do not.

Q. Do you remember how long a space there was between his indictment and his trial?

A. I do not.

Q. Do you remember when the trial took place?

A. No, sir; I can not state when that took place. Those are all matters that ran along, and I paid no special attention to them.

Q. That is what I am getting at. That is what I understood you to say.

A. Yes.

Q. Do you remember how long the trial lasted?

A. No, sir; I do not remember that.

Q. Do you know, of your own knowledge, what precautions were taken during that trial to prevent mob violence?

A. No, sir; I can not say that I do.

Q. Do you remember whether or not during the trial the jail was guarded with extra deputies, policemen, and so forth, at night?

A. I do not think I was about the jail, and I do not know whether it was or not.

Q. You do not remember whether you heard about it?

A. No, sir.

Q. You do not remember whether you heard of such a thing, if it existed?

A. I do not remember.

1918 Q. Did you ever hear that the county had bought extra Winchester rifles, or other arms, to protect the prisoner during the trial?

A. If I did I do not remember it.

Q. If there was such an emergency at that time that the county found it necessary to do that, you have forgotten it?

A. Yes, sir.

Q. If it was necessary to guard Ed. Johnson during the trial at night, with extra deputies and policemen, you have forgotten that—is that was true?

A. Yes, sir.

Q. Do you remember whether or not his counsel or one of his counsel made a public statement after he had been convicted and sentenced, as to the reason—well, do you remember whether any appeal was taken, in the first place?

A. I remember to have heard something of a conference in reference to an appeal, but I can not state anything very positive and definite about that. My understanding, as I remember it now, was that some of his counsel and some others agreed in reference to that and decided against an appeal, as I remember; but it is a matter of memory that is not very distinct, and I can not make a positive statement about it.

Q. Do you remember who those counsel were?

A. I think Judge Shepherd was one of them.

Q. You think Judge Shepherd was one?

A. I believe so.

Q. Do you remember anyone else?

1919 A. No, sir; I do not at present.

Q. Do you remember whether they did decide to appeal or not?

A. My recollection is that they decided not to appeal.

Q. Your recollection is that they decided not to appeal?

A. That is my recollection.

Q. Do you remember whether any of them——

A. Matters of memory with me, Mr. Sanford, you must recollect, are not as vivid as they were 40 or 50 years ago.

Q. Your memory is not as vivid and strong as it was in former years, is it?

A. Sir?

Q. I say your memory is not as accurate as it formerly was?

A. No, sir; it is not.

Q. I so understood you. Do you remember whether one of those counsel made a statement the next day, in the public press, as to the reason why they did not appeal?

A. I believe so, but I can not remember definitely about that. If so, I do not remember what the reasons were.

Q. Do you remember whether that was a signed statement from Mr. Thomas, and, refreshing your recollection, whether he stated as

one of the reasons—not the only one, but as one of the reasons—
1920 that they were all convinced that if he took an appeal he would be lynched; that he would be hung by the mob if he was not hung by law?

A. I do not remember definitely as to that.

Q. You do not remember that?

A. No.

Q. If that occurred?

A. If that occurred.

Q. Do you remember what was done with Johnson after he was sentenced?

A. No; I have an idea that he was taken to Knoxville.

Q. Do you remember when?

A. No, sir; I do not.

Q. Well, Doctor, the public excitement, the lynching spirit, would naturally subside when he was sentenced to be hung and no appeal was taken, and if he was taken away to Knoxville there would be no danger of lynching at Chattanooga as long as he remained at Knoxville?

A. No, sir.

Q. That would be very natural, with the public feeling. Now, would not anything that tended to upset that peaceful condition, and to bring about delay in the case, and to interfere with his legal execution on the day fixed, and bring about uncertainty and delay—would not that tend to increase the danger of lynching; to revive the former feeling among the lawless element?

A. I think its tendency would be such.

1921 Q. Do you remember whether steps were taken in behalf of Ed. Johnson? Do you remember to what court, if any, the case was taken, or an attempt was made to take it?

A. I think it was transferred from the state to the federal court, in some way. I do not remember, or do not know, just how.

Q. Do you remember whether any effort was made by two lawyers, Parden and Hutchins, two negro lawyers of this city——

A. To the state court?

Q. Do you remember whether they tried to take the case to the Supreme Court of Tennessee; do you remember that?

A. I remember it was said they had made an effort to do something, but as to just what I do not remember. I rather think that was the case, that they made an effort to take it to the Supreme Court.

Q. The Supreme Court of the State, or of the United States?

A. I think of the State, but I might be mistaken.

Q. You think of the State?

A. Yes.

Q. If the white lawyers of the city had decided not to appeal—if the white lawyers who had the case in charge had decided not to appeal, and two negro lawyers afterwards attempted to override their action, and to appeal it, with what you know about the con-

dition of race feeling that existed at that time, would not that
1922 have a tendency to increase the danger of lynching from the lawless element?

A. I think it would to some extent, sir.

Q. Do you remember whether any other effort was made by these lawyers or anyone to take the case anywhere else?

A. I think so.

Q. Do you remember where?

A. No, sir; I do not. It in some way got into the United States court.

Q. Where did it get into the United States court?

A. I cannot tell you that.

Q. You cannot tell me.

A. No, sir.

Q. Do you know where Ed. Johnson was in the meantime?

A. No, sir; I do not. I am inclined to think he was in Knoxville, but I am not sure about that.

Q. All the time?

A. I don't know.

Q. You do not know into what United States court it was taken, or where, as I understand you?

A. No, sir; I think it was my recollection that it first came into Judge Clark's court and then to the higher court.

Q. First into Judge Clark's court and then to the higher court?

A. Yes, sir.

1923 Q. Do you remember when that was?

A. No, sir; I do not.

Q. What higher court was it?

A. I do not know that. It was a United States court, but I do not know.

Q. A higher court of the United States, but which one you do not know?

A. No, sir.

Q. Do you remember what action that higher court took, if any, in reference to the matter?

A. No, I do not think I can tell you that.

Q. Or what time it took the action, if any?

A. No, sir.

Q. Or how long before the lynching? You do not remember about that?

A. No, sir.

Redirect examination by Mr. PRITCHARD:

Q. Mr. Sanford asked you several questions about some publication of some attorney connected with the defense of Johnson, made subsequently to his conviction, to the effect that the failure to appeal was due to some fear that Johnson would be lynched. I will ask if you remember that Mr. W. G. M. Thomas was one of the attorneys for Johnson?

A. I think he was, since I am reminded of it.

Q. And Mr. R. T. Cameron was another?

1924 A. I do not remember Cameron.

Q. Judge Shepherd was one and Mr. Thomas was another, as you remember?

A. Yes; as I remember.

Q. I will ask you whether the publication Mr. Sanford has referred to was by Mr. Thomas—whether you can now recall that it was by Mr. Thomas?

A. No; I do not remember the circumstances.

Q. On that subject I will ask you whether or not you remember that the attorneys who represented Johnson unanimously agreed and repeatedly stated that the reason they did not appeal was because Johnson had had an absolutely fair trial and was unquestionably guilty? Whether that is the reason they did not appeal?

A. I think that was given as a reason.

Q. I will ask you if that was not given out as the reason for not appealing?

A. Yes.

Q. I will ask you whether or not you recall, when there was some hesitancy upon the question as to whether they should appeal or not, the appointment by Judge McReynolds of a committee of lawyers to confer with the gentlemen who had represented Ed. Johnson and upon that conference to determine whether Johnson had had an absolutely fair trial and whether there was any error in the record? Do you remember the appointment of that committee?

A. I do not remember as to that.

1925 Q. Do you recall the appointment of Robert Pritchard, J. H. Cantrell, and Foster V. Brown as that committee?

A. I think I do remember of that committee in connection with the case in some way.

Q. To confer with the gentlemen who had represented Johnson with respect to whether their duty required them to appeal under the circumstances. Do you recall that?

A. Yes; I think since you mention it that I remember especially of Mr. Brown being connected with the case in that sort of capacity.

Q. The members of that committee had not been counsel or connected in any way with the Johnson case?

A. I think not.

Recross-examination by Mr. SANFORD:

Q. Were the reasons that were given for not appealing contained in that statement that was given out in the paper? That is where you got them, is it not?

A. I think so.

Q. You were not at the court-house?

A. No, sir; I was not at the court-house.

Q. I will ask you, refreshing your recollection, if this did not occur in that statement to which you have referred—the statement of

W. G. M. Thomas, published in the Chattanooga Times, Saturday, February 10th, the day immediately after the conviction, headed "W. G. M. Thomas tells why case will not be appealed."
1926 Does not this occur in that statement by Mr. Thomas, after stating other reasons, one of which was that they did not think there was any reversible error in the case: "We"—that is, referring to the lawyers for Johnson, and these other gentlemen, Pritchard, Brown, and Cantrell—"We discussed the recent mob uprising and the state of unrest in the community. It was the judgment of all present that the life of the defendant, even if the wrong man, could not be saved; that an appeal would so inflame the public that the jail would be attacked and perhaps other prisoners executed by violence. In the opinion of all of us a case was presented where the defendant, now that he had been convicted by a jury, must die by the judgment of the law, or else, if his case were appealed, he would die by the act of an uprising of the people." Do you remember that?

A. Very vaguely.

Q. Do you remember the general tenor to that effect—that that was in the statement that was published?

A. I rather think so; but I would not make a positive statement about all those things. It is a mere question of memory with me. I did not charge my memory with it.

Q. Do you remember in that that Mr. Thomas stated that he and Mr. Cameron and Judge Shepherd went to see Ed. Johnson at the jail, and said, in reference to their interview with Johnson,
1927 "I then said to him, 'Ed., your life has been saved up to this time, but the people believe, now that the jury have acted, more than they ever did before, that you are the right man. They are outraged against you, and even if you are innocent, as you say you are, we do not believe that we can save your life.'" Do you remember that, in that statement?

A. Not definitely.

Q. Do you remember anything of that general tenor?

A. I remember something of that tenor.

Redirect examination by Mr. PRITCHARD:

Q. Mr. Sanford has chosen to read certain choice extracts from that article, that suited his purpose. Do you recall what the balance of the article was?

A. No, sir; I do not.

Q. Do you recall that the article distinctly stated that the negro had had an absolutely fair trial, and was undoubtedly guilty?

A. Yes; I remember that was stated.

Mr. SANFORD. I object to the question as to whether or not Johnson was guilty as utterly immaterial to any issues in this case.

Mr. PRITCHARD. I understand; but I want to get all the reasons for not appealing, and not a selected reason, to suit the purpose of the Government.

1928 SAMUEL T. DEWEES, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. LYNCH:

Q. How long have you lived in Chattanooga?

A. About 35 years.

Q. What business are you engaged in?

A. I have been in the mercantile business most of the time; the grocery business.

Q. What business were you engaged in on March 19, 1906?

A. In the grocery business.

Q. I will ask you whether or not that is on Market street, the principal street of this city?

A. Yes, sir.

Q. How long have you known Captain Shipp?

A. Well, I think ever since he has been here; I think twenty-five or thirty years.

Q. Do you know his general character in the community?

A. Yes, sir; I do.

Q. Is that general character good or bad?

A. Very good.

Q. From that general character would you believe him on oath?

A. I would.

1929 Q. And about his general character for peace and good order?

A. It has been excellent.

Q. Do you remember the circumstance of Ed. Johnson being arrested here and charged with the rape of a white girl?

A. Yes, sir.

Q. Do you remember the excitement that followed his arrest?

A. Yes, sir.

Q. And the attempt to lynch him?

A. Yes, sir.

Q. I will ask you if you also remember his trial and conviction?

A. I do.

Q. I will ask you whether there was or was not a good deal of excitement and bitter feeling soon after his arrest and up to the time of his trial?

A. Yes, sir.

Q. A great deal of talk of mob violence?

A. Yes, sir.

Q. After he was tried and convicted, I will ask you whether that excitement and talk of mob violence continued or subsided?

A. Well, it subsided to a very great extent. I should think there was very little talk of lynching at that time, after the conviction.

Q. From then on up to the time when he was actually

1930 lynched, I will ask you if there was any talk at that time at all of lynching him, or any excitement about the case at that time at all?

A. After which?

Q. On the day Johnson was lynched?

A. I had not heard of any; no, sir; none at all.

Q. I will ask you if, at that time, the case was being generally discussed among the people at all?

A. No, sir; I think not; very little that I heard.

Q. I think you say your place of business is on Market street?

A. Yes, sir.

Q. The principal business street of the city?

A. Yes, sir.

Q. I will ask you if you trade with and have customers among all classes of people?

A. Yes, sir.

Q. In your business and trade do you come in contact with all classes of people?

A. Yes, sir.

Q. I will ask you if on that day you heard the subject of lynching Ed. Johnson mentioned by anyone?

A. No, sir; I do not recall that I did.

Q. I will ask you if you saw or heard anything that would indicate to you that there was a probability or the slightest danger of lynching Ed. Johnson on that day at that time?

1931 Mr. SANFORD. I object to that question as calling for opinion evidence of this witness on matters in which opinion evidence is not competent, and I object to the answer that may be given.

Q. (By Mr. LYNCH.) Did you see or hear anything of that sort?

A. I did not.

Cross-examination by Mr. SANFORD:

Q. What were you doing that day?

A. I was in my store attending to my business.

Q. Your store is not a resort of the disorderly element, of the lawless element, of the community, is it?

A. Not at all; no, sir.

Q. Why did the excitement subside after Ed. Johnson was sentenced to be hung?

A. I presume the people were satisfied that the law would take its course.

Q. And that he would be hung?

A. Yes; that he would be hung.

Q. Would not anything that came up that made it doubtful whether he would be hung or that interfered with the original taking of the law's course on that day tend to renew the excitement?

A. Well, I could not say now. Possibly it would, to some extent, with some element.

Q. With the lawless and disorderly element?

A. It probably might.

1932 Q. One of the main causes of lynching is the desire of the lawless element that there shall be no delay, is it not, and that justice shall be speedily done, without delay?

A. I presume so; yes, sir.

Q. And whenever they are convinced that there is to be no delay they subside, and whenever they feel that there is to be a delay and uncertainty, the danger of lynching revives. That is the fact, is it not?

A. Yes, sir; I suppose it would be.

Q. Do you remember very much about the Ed. Johnson case? Did you follow it with any particular interest?

A. I kept up with it at the time of its occurrence.

Q. Do you remember the details of it, and the different stages in the trial with any accuracy, and all the progress of the case?

A. I remember the general course of the trial, and events.

Q. Do you remember how long it was between his arrest and his indictment?

A. It was some days; I do not remember exactly.

Q. Was it two days, two weeks, or two months?

A. Well, perhaps it was several days. If I were just to make a rough guess, I would say maybe eight or ten or twelve days.

Q. You have not any recollection about it, but are guessing?

1933 A. I am guessing. I have no accurate recollection.

Q. You do not recollect?

A. No.

Q. Do you recollect how long it was after he was first arrested before they tried to lynch him the first time, if they did try?

A. I suppose that was just a day or two following.

Q. Are you guessing at that?

A. I am guessing. I do not remember the exact time.

Q. I only asked you for your recollection. If you do not recollect, a guess would not help us much. You do not recollect?

A. No, sir; I would not be able to say.

Q. You were not on hand the night of the lynching, and you did not attempt to prevent it, did you?

A. No, sir.

Q. You did not know anything about it?

A. No, sir; I did not.

Q. It was a surprise to you?

A. At the time of the lynching, oh, yes; that was a surprise.

Q. I mean the first attempt at lynching?

A. That was not a surprise.

Q. Were you at the jail?

A. No, sir.

Q. Did you attempt to prevent it?

A. No, sir; I did not.

1934 Q. How long after he was indicted was it before he was tried?

A. It was a week, or possibly two weeks—two or three weeks.

Q. Have you any recollection about that?

A. No, sir; I do not have those dates. I just kept up with it as it went along, and have not thought of it since.

Q. It is purely a guess?
A. It is purely a guess. I could not give any dates or exact time.
Q. Do you recollect how long the trial lasted?
A. No; I do not remember how many days; no, sir.
Q. Did you know that unusual and extraordinary precautions were being taken during the trial?
A. Yes, sir; I had heard that precautions were being taken.
Q. What precautions did you hear about?
A. What I would gather from the papers and conversations.
Q. What did you hear about?
A. I know there was extra guards around, and precautions were being taken to prevent lynching.
Q. Around where?
A. Around the jail and the court-house.
Q. Did you know the jail was being guarded at night by extra deputies and by policemen?
A. Yes, sir.
1935 Q. You knew that?
A. Yes, sir.
Q. And you knew the county had purchased extra ammunition and arms?
A. Yes.
Q. You knew that?
A. Yes; I knew those precautions had been taken.
Q. When Johnson was sentenced, what became of him?
A. Well, I think he was taken to Knoxville.
Q. How long after he was sentenced?
A. Well, I suppose it was very soon; I do not remember just when.
Q. Do you remember whether he was taken to Knoxville or whether he was kept here in Chattanooga?
A. Yes.
Q. You remember that he was?
A. Yes.
Q. And you think very soon?
A. Yes.
Q. When was he brought back to Chattanooga, or taken somewhere else? What became of him after that?
A. He was brought back to Chattanooga, I think, after the Supreme Court had ruled on the case at Knoxville.
Q. After the Supreme Court had ruled? Do you understand that the Supreme Court ruled on the matter at Knoxville?
A. He was brought back before that.
1936 Q. How long was he brought back before he was lynched?
A. I think just a day or two, or a few days.
Q. Do you remember the day he was lynched?
A. Yes, sir.
Q. Monday was it?
A. I don't know whether I could give you the date of it.

Q. Was it Monday?
A. I would not be able to say what day it was.
Q. But if it was Monday, you would think he was brought back the Saturday before, or something like that?
A. Something like that; yes.
Q. Do you remember whether his case was appealed to the supreme court of the State, or not?
A. No; of the United States, I understand.
Q. Was it appealed to the supreme court of the State at all?
A. I could not say.
Q. Was any effort made to take it to the supreme court of the State?
A. That I could not say.
Q. You do not remember?
A. No, sir.
Q. Do you remember what United States court it was taken up to, and by whom?
A. By what attorneys, you mean?
Q. Yes.
A. Well, I understood that Judge Shepherd was one of the attorneys, and a couple of colored attorneys, I think.
1937 Q. Where did they take the case to?
A. Washington, I believe.
Q. You understood that they took it to Washington?
A. Yes.
Q. Was there any other step, now, between that and his sentence that you remember?
A. Not that I remember of.
Q. And the time it was taken to Washington—how long was that before he was lynched?
A. That could not have been many days.
Q. If you have any recollection about it one way or the other—not to guess at it, but a recollection—I would like to have you state it.
A. No. I could not give you dates nor days.
Q. Nor time?
A. No, sir.
Q. Do you remember whether the Supreme Court made a decision in the matter at Washington?
A. Just what the decision was?
Q. Whether they did decide anything?
A. Oh, yes.
Q. What was that decision?
A. Well, perhaps I could not tell you just what the decision
1938 was. I know it was a stay of execution.
Q. It was a stay of execution?
A. Yes.
Q. How long was that before he was lynched?
A. Well, I believe—I say, I do not remember exactly, but it was just a little while, just a very few days.

Q. What would you mean by a very few days?
A. Well, two or three days or something like that.
Q. Was it longer than that?
A. I could not say. I would not be able to say from recollection.
Q. You could not say from recollection?
A. No, sir.
Q. When and how did you hear of the action of the Supreme Court?
A. Through the papers, I suppose.
Q. Through the papers, you suppose?
A. Yes, of the city.
Q. And your best recollection is it was two or three days before the actual lynching occurred?
A. Yes, sir.

Redirect examination by Mr. LYNCH:

Q. Mr. Sanford has asked you if the lawless element does not always want a rapist like this brought to speedy justice. I will
1939 ask you, whether as a matter of fact, all classes of citizens, even good citizens, do not want a rapist brought to justice?
A. They surely do.
Q. He asked you if you were surprised at the first attempt to lynch him. I will ask you if you were at all surprised at that time?
A. No, sir; I was not.
Q. I will ask you whether you were surprised at the last attempt, the one that did succeed.
A. Yes, sir; I was. I was not expecting that.
Mr. SANFORD. I object to that as incompetent.
Mr. LYNCH. I am following up your examination.
Mr. SANFORD. There are a good many things that are competent on cross-examination that are not competent on direct.
Mr. LYNCH. You made it competent.
Mr. SANFORD. I hardly think so.
Q. (By Mr. LYNCH.) He examined you on the causes of lynching, and the things that bring about lynching. I will ask you whether or not the abhorrence of the crime is one of the principal causes of lynching?
A. Yes.
Mr. SANFORD. I object to the question as leading.
Mr. LYNCH. I put it whether or not.
Q. (By Mr. LYNCH.) I will ask you whether or not this is true. Mr. Sanford spoke of the delay and the failure to bring the
1940 defendant to speedy justice causing the lawless element to lynch a man. I will ask you whether at the time of the first attempt to lynch this man there had been any delay or any attempt to delay the proceedings?
A. No, sir; I think not.
Q. I will ask you whether or not this is true; that lynching is usually the result of the first wave of indignation at the crime?

Mr. SANFORD. I object to that as distinctly leading, and suggestive to the witness.

Q. (By Mr. LYNCH.) I will ask you whether or not lynching usually follows the crime, and is usually the result of the first wave of indignation at the crime?

A. I think so.

Q. I will ask you whether or not it is very seldom that a lynching occurs as long after the commission of the crime, and when the man has been tried and feeling has subsided, as it did in this case.

Mr. SANFORD. I object to that as leading and suggestive.

Q. (By Mr. LYNCH.) I will ask you if you ever knew of a case where a man had been lynched after so long a time, and after the feeling had once subsided, as in this case, before this time?

A. No; I do not recall it.

Recross-examination by Mr. SANFORD:

1941 Q. Was that abhorrence of the crime of rape any less in the community on the day Ed. Johnson was lynched than it was two months before?

Mr. LYNCH. I did not catch the question.

Q. (By Mr. SANFORD.) I say; was the abhorrence of the crime of rape any less in the community on the day Ed. Johnson was lynched than it was two months before?

A. I should say not.

Q. And so far as the abhorrence of the crime of rape is the cause of lynching, that cause existed just as much on the day of the lynching as it had two months before—so far as that is the cause?

A. Yes, sir.

Redirect examination by Mr. LYNCH:

Q. I will ask you whether there has yet been any subsidence of the abhorrence of that particular crime in this community?

A. No; I think not.

Q. You say you were there when the attempt was made to lynch Johnson?

A. I was not.

Q. You were not there?

A. No.

Q. You did not witness that?

A. No, sir.

1942 Q. I will ask you whether or not there was a settled conviction on the part of the law-abiding element in Chattanooga, both at the time he was tried and afterwards, and at the time of the lynching, that this defendant was guilty?

Mr. SANFORD. I object to that, in the first place, as most directly leading and suggestive, and putting words in the witness' mouth, and furthermore, on the ground that it is entirely incompetent and irrelevant to the issues in this case.

Mr. LYNCH. We think it is competent, for the reason that will appear in a moment.

Q. (By Mr. LYNCH.) I ask you whether or not that is true.

A. Yes, sir.

Q. I will ask you whether with that feeling on behalf of the law-abiding people here, you believe that such men as you are, and other law-abiding citizens, would have wanted to have risked their lives to have protected this man.

Mr. SANFORD. I object to the leading nature of the question, and the suggestion of the answer to the witness.

Q. (By Mr. LYNCH.) Feeling that he had committed a horrible crime like that.

Mr. SANFORD. I further object to that question as calling for
1943 a purely hypothetical answer, on an imaginary state of facts.

Q. (By Mr. LYNCH.) Answer the question.

A. I have not got the question exactly.

Q. I ask you whether or not you would have felt, and if you believe that other law-abiding citizens like you would have felt, like voluntarily risking your life to protect a man that you believed guilty of committing a crime of that kind?

A. I do not know as I would like to risk my life to do it; no.

Q. I will ask you if you believe that the other law-abiding citizens of this town would have wanted to have risked their lives in protecting that man?

A. No, sir; I think not.

Mr. SANFORD. I continue the same objections to those questions.

Q. (By Mr. LYNCH.) You think not?

A. I think not.

Q. I will ask you whether or not you were a federal soldier during the civil war?

A. Yes, sir.

Recross-examination by Mr. SANFORD:

Q. Would you have refused to obey if the sheriff had sum-
1944 monsed you as a posse to protect a man from lynching whose case was still in court, and not finally decided by the court? Would you have refused to obey that summons, to do what you could, as a law-abiding citizen, to protect him while his case was still in court?

A. I did not mean to say that.

Q. Would you have done it?

A. Very likely.

Q. If the sheriff had called you, as a good citizen of the town, while the case was still in court?

A. Very likely.

Q. And a great many other good men would have done that too?

A. Yes, sir.

Q. He did not call on you, did he?

A. No, sir.

Redirect examination by Mr. LYNCH:

Q. He would have had to hunt you up, and to have made a direct call on you?

A. Yes, sir.

Q. And you were not where he could have reached you then, as far as you know?

A. No, sir.

Q. You would not have responded to a general sounding of an alarm, to go up and risk your life?

A. I should not.

1945 Mr. SANFORD. I object to that as leading and hypothetical, and entirely irrelevant.

Mr. LYNCH. I am putting the only hypothetical question that could apply to the state of facts, as they exist.

By Mr. SANFORD:

Q. You did not hear any bell rung that night, did you?

A. No, sir.

Q. Did you hear a bell rung the night of the first attempted lynching?

A. Yes.

Q. They never rang the alarm bell the night the man was lynched, did they?

A. Not that I heard.

By Mr. LYNCH:

Q. You did not respond to the first ringing?

A. No, sir.

Q. And you would not have responded to the last?

A. No, sir.

By Mr. SANFORD:

Q. It did draw out a great big crowd the first night, though?

A. Yes.

Q. That is the fact?

A. Yes.

1946 Q. The alarm bell was sounded, then?

A. Yes.

Q. And it aroused the town?

A. Yes, sir.

By Mr. LYNCH:

Q. And it might have drawn more who would have wanted to hurt the negro than to protect him?

A. Very likely.

Mr. SANFORD. I object to that as purely hypothetical.

Judge C. D. CLARK, who had been previously sworn and examined on behalf of the defendants, was recalled on behalf of the defendant, Jerry Gibson, and testified as follows:

By Mr. COOKE:

Q. I will ask you if you are acquainted with the defendant, Jerry Gibson?

A. Yes.

Q. How long have you known him?

A. I have known him as long as I have Captain Shipp—ever since I have lived in Chattanooga—since 1883, or about that time, as I remember it.

Q. About what aged man is he, Judge?

1947 A. I do not know that. I would guess he was 55 or 60, but that I do not know.

Q. Are you acquainted with his character?

A. I think so.

Q. Is it good or bad?

A. Good.

Q. From that character would you give him full faith on his oath in a court of justice?

A. I would.

No cross-examination.

JOHN H. CANTRELL, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Are you a lawyer?

A. Yes, sir.

Q. How long have you practiced law in Chattanooga?

A. About twenty years. I have had a license about 20 years and have been practicing most of the time.

Q. Where is your office?

A. In the Miller Building, at the corner of 7th and Market streets, in Chattanooga.

Q. Is 7th street the same street that goes up by the court-

1948 house and extends eastwardly by the court-house?

A. Yes, sir.

Q. And you office is at the corner of Market and Seventh?

A. At the corner of Market and Seventh.

Q. Going toward the court-house, what streets do you cross before you get to it, as you go up the hill before you get to the court-house?

A. Leaving Market street you would cross Cherry and Wallnut.

Q. Is the court-house on Wallnut street?

A. Yes, sir; the court-house fronts on Wallnut street.

Q. Is the jail on the opposite side of Wallnut street, and also on Wallnut street?

A. Yes, sir.

Q. So that your office is at the corner of Market & Seventh streets, and the court-house fronts westwardly on Wallnut street, and the jail fronts eastwardly on the same street?

A. Yes, sir. My office is about two squares and a half from the jail.

Q. Mr. Cantrell, were you in any way connected with the Johnson trial; I mean as a lawyer?

A. I was not.

Q. Either for the prosecution or the defense.

A. I was not.

1949 Q. Were you in and out of the court-house during the time of the trial of Johnson?

A. Yes, sir; I was in the court-house several times during the two or three days the trial lasted.

Q. I will ask you if there was at that time quite a considerable number of people attending the trial, and quite a lot of people around the court-house?

A. There were not many people around the court-house.

Q. In the court room, then?

A. That I remember. There was, according to my recollection, probably an average of about 300 in the court room.

Q. In attendance?

A. Yes. I would guess it at that number. There might have been more or less.

Q. Do you recall that Judge Allison's court was going on in the court-house at the same time?

A. I would not be positive about that, but I think it was.

Q. To refresh your recollection, I will ask you if on the day of the beginning of the trial of Johnson, at the request of Judge McReynolds, of the Crimnal Court, Judge Allison adjourned his court, and immediately, the next day, resumed it, and went on with the sessions of it during the time of the trial of Johnson?

A. I do not recall about that, not having thought about it since.

Q. If you had any connection at all with the Johnson
1950 trial, or with any action that was taken in the Johnson trial, or any failure to take action in the Johnson trial, I would like for you to state the commencement of that connection, and how it originated, and at whose instance, if you know.

A. I think it was the day after the trial was concluded, in the afternoon, a conference of attorneys was held in my office or in our office—the office of Garvin and Cantrell.

Q. I will ask you if you were a member of any committee, and who composed that committee, and what the duties of the committee were, and how they came to be appointed, or came to act?

A. I was advised by some one that Mr. Thomas and Judge Shepherd had requested Judge McReynolds to designate some two or three lawyers to advise with them as to what their duty was in reference to any further proceedings in the case, and that Mr. Foster V. Brown, Mr. Robert Pritchard, and myself had been suggested by Judge McReynolds as a committee to confer with Judge Shepherd, Mr. Thomas, and Mr. Cameron.

Q. I will ask you to state if Judge Shepherd, Mr. Thomas, and Mr. Cameron were the counsel who represented Johnson.

A. They were the counsel who defended Johnson in the rape case.

Q. I will ask you whether this appointment or request to act was after the conviction of Johnson?

1951 A. Yes, sir.

Q. And pending action on an appeal in his case?

A. Yes, sir.

Q. I will ask you whether the gentlemen you name, yourself, Mr. Brown, and Mr. Pritchard, did meet at your office?

A. Yes, sir; all six of us had a conference in my room, in our office, the day after the verdict of guilty.

Q. What was the question to be determined?

A. As I understood it, the question we were trying to determine was whether or not it was the duty of Messrs. Shepherd, Thomas, and Pritchard——

Q. Not Pritchard?

A. I mean Cameron—Messrs. Shepherd, Thomas, and Cameron, as attorneys, to appeal the case of Johnson to the Supreme Court of Tennessee.

Mr. SANFORD. I desire to note an objection to all testimony that may be given by this witness on the subject of conversations and conferences between these gentlemen at this time; or matters of their private conference at that office.

Mr. PRITCHARD. I will state that this testimony is offered for the purpose of contradicting the evidence the Government has undertaken to produce, or the inference the Government has sought to have drawn from certain evidence, as to why the appeal was not taken; and I shall therefore proceed with the examination

1952 subject to Mr. Sanford's objection all the way through. I will understand that they are made all the way through.

Mr. SANFORD. That is, on the ground that the conversations and conferences between counsel in the case are hearsay and incompetent.

Q. (By Mr. PRITCHARD.) In that conference, Mr. Cantrell, I will ask you to state what was done, and what conclusion was arrived at, and how that conclusion was arrived at.

A. The conference lasted, I think, for something over an hour.

Mr. SANFORD. I desire to note a further objection, that the reasons that may have influenced counsel in their deliberations, insofar as they were not made public, are incompetent to any issue in this case. This case is not involved in the question of the rightness or wrongness of the original proceedings. That has nothing to do with this case.

The WITNESS. Messrs. Thomas and Shepherd both stated to us that they had gone over the evidence in the trial of the case carefully, and that so far as they were able to see there was no reversible error in the record. They said they knew of no error in the admission of evidence, and no error in the charge of the court, and that they thought the evidence was sufficient, and that the Supreme Court of Tennessee

would not be justified in reversing the case on the ground of
1953 want of sufficient evidence to sustain the verdict; and that upon the record as it stood they thought an appeal would probably mean only delay. Upon that state of facts Mr. Pritchard, Mr. Brown, and myself, I think, all agreed with them, and they seemed to agree to that idea themselves—that it was not their professional duty to appeal the case to the Supreme Court of Tennessee, or to advise the defendant to appeal. They left my office stating, or with the understanding, as I understood it, that they would go to the jail and see the prisoner and advise him not to appeal the case, but to submit to the verdict and sentence of the court.

Q. (By Mr. PRITCHARD.) I will ask you to state whether these gentlemen, Mr. Shepherd, Mr. Thomas, and Mr. Cameron, made any question, or gave any intimation or suggestion reflecting in any manner upon the fairness of the trial on the part of the prosecution, the court, or the jury, or in any other way whatever?

A. They did not.

Q. What did they say?

A. Well, they said that the officers of the State had furnished them every facility, and had furnished them with the names of the witnesses, and that they were apprised of all the evidence that would be introduced before it was introduced, excepting as to one man, the testimony of one witness, who testified that he put a clock on a certain date in the saloon of Mr. Jones.

Q. Where the attempted alibi was?

1954 A. Where the prisoner had been staying; and they said they understood that witness was not found until just a short time, probably half an hour, before he was put on the stand; and that there was no opportunity to talk with him or to see what he would swear—that the State itself did not know what he was going to swear until just before he was put on the stand.

Q. I will ask you if the committee you have named gave these gentlemen the suggestion or advice that it was not their duty to appeal, upon the statements of these gentlemen themselves concerning the conduct of the trial; that that was the basis of the committee's advice?

A. Yes, sir; we heard their statements fully before reaching any conclusion as to what to advise them.

Cross-examination by Mr. SANFORD:

Q. The question of the danger of a lynching to Ed Johnson, in the event of an appeal, was also considered.

A. That was suggested, and thought of.

Q. What is that?

A. Yes, sir.

Q. And that was one of the considerations that was discussed at that time?

A. Yes, sir; that was discussed.

Q. And did you not state in that meeting that you had heard
1955 at least twenty-five men that morning say that an appeal would mean the lynching of Ed Johnson?

A. I do not remember to have said anything of that kind. I do not remember to have heard anybody say it would mean the lynching.

Q. Did you not make that statement to all these lawyers there present—refreshing your recollection?

A. I have no recollection of making that statement.

Q. Did you hear Mr. Thomas' testimony before Judge Clark?

A. No, sir; I heard none of the testimony.

Q. You were not before Judge Clark?

A. No, sir. I did say, I think, in that conference, that where the record showed no reversible error that I did not believe it was the duty of counsel to appeal a case, in any case, without reference to excitement. I did think at the time, and probably expressed the opinion, that an appeal and delay might revive the mob spirit, and I thought that was a consideration in this particular case, a further consideration, why it was not their duty to appeal.

Q. That is your recollection?

A. Yes, sir. I do not remember having said anything about hearing any number of people talking about it.

Q. You had heard a good number of people say that?

A. I do not remember now whether I heard anybody say that or not. I know I thought that possibly that might be the result of it.

Q. And did not Mr. Pritchard make a statement in that con-
1956 ference that he had seen some man on the car that morning as he came in, or some time during the day, whom he said was a good citizen, if he would give us his name, but he did not give us his name, who said he was opposed to mob violence, but if Johnson took an appeal, he, himself, a good citizen, would head a mob to lynch him? Did not Mr. Pritchard make that statement?

A. I do not remember what Mr. Pritchard said, exactly, about that. I think Mr. Pritchard did say that he expected there might be some danger of lynching, but as to the details of he having heard any particular citizen say so, I would not be positive about that. He may have said it. A great deal was said all along in reference to the case generally.

Q. Were you thoroughly impressed, and did you not all agree there, that to attempt an appeal on behalf of Johnson would mean that Johnson would be lynched, and that that was a consideration to be taken in connection with the fact that the lawyers were of the opinion that there was no reversible error in the case?

A. We thought it possible, and even probable, that it might result in that at the time. At least, I think that was the opinion that was expressed.

Q. That that was a consideration to be taken in connection with the fact that you believed there was no reversible error?

A. That idea was expressed. I know I had that idea in my mind at the time, and I think I expressed it. I said I did not think it

1957 was their duty, under the statement they made, if there was any danger of lynching, to appeal it; and in view of the possibility of a lynching, and as we had gotten by the mob and prevented a lynching by the trial, that I thought it would not be advisable and would be going outside of their duty to appeal it under the circumstances. I thought it would be wrong to appeal it unless there was a chance to reverse it.

Q. And you felt that the delay that would result in case of an appeal after he had been convicted would cause danger of lynching?

A. I thought there might be some danger of it. I did not know. There had been an attempt to lynch him shortly after his arrest, and I knew there had been a good deal of feeling about it.

Redirect examination by Mr. PRITCHARD:

Q. You were asked whether Mr. Pritchard made some statement about seeing people on cars. Did you ever see Mr. Pritchard ride on a car in his life; and do you know whether Mr. Pritchard does ride on a car, or whether any car runs to his house, or whether he ever uses a street car?

A. I know no car runs to his house.

Q. Or by his office?

A. Or exactly by his office. As to whether he rides on a street car or not, I cannot say.

1958 Q. You know that Mr. Pritchard usually either walks or rides in a vehicle of his own, do you not? Did you ever see him ride in a car in his life?

A. I remember one occasion when I think I saw him on a car, and the only occasion, I think. That was when Messrs. Pritchard and Sizer entertained the bar out at Chickamauga Park.

Q. That has been a good many years ago?

A. I do not know whether that was a street car. That was a rapid transit line, and I think it was a good many years ago.

Q. I will ask you whether the fact is not true that the only mention of hearing anything—in that conference, I mean—of any remark made upon the subject of the lynching of Johnson, was not this remark made by Mr. Pritchard, not about 25 or any other number, but that he had heard one man say that if the appeal was taken in the Johnson case after a fair trial, for the mere purpose of delay, that there was serious danger of lynching—if that was not the statement, and the only statement?

Mr. SANFORD. I object to the question as leading and suggestive, in addition to its incompetency; and I object to the testimony called for.

The WITNESS. As I said awhile ago, I do not remember the details as to what was said by Mr. Pritchard. I have no distinct recollection as to his saying that any particular individual had stated there would be a lynching.

Q. (By Mr. PRITCHARD.) Have you any recollection of your
1959 saying anything upon that subject, of hearing 25 men or any other number of men saying it?

A. I have no recollection of saying that. I have no recollection of having heard 25 men.

Q. Or having heard anybody. I will ask you to refresh your recollection as to whether or not, in the course of that conference, concerning the duty to appeal, if it was based upon the theory, on the part of the committee, that if there was reversible error or an unfair trial in any respect, that it would be the duty of these lawyers to prosecute an appeal, but if not it would not be their professional duty? I will ask you if that was or was not the proposition before the committee, and if the committee did not leave it to the lawyers themselves to say upon that subject?

Mr. SANFORD. I object to the question as leading and suggestive, in addition to the incompetency, on the ground stated.

The WITNESS. Either Mr. Brown or myself may have used some such language as that in the course of the conversation. A great deal was said.

Q. (By Mr. PRITCHARD.) Do you recall Judge Shepherd making an argument to the effect that these counsel, himself, Mr. Thomas, and Mr. Cameron, were only appointed in the Circuit Court, and that their duties as such counsel did not require them to appeal it; and do you remember the committee combatting that idea and urging
1960 that it would be their duty to appeal if there was reversible error or an unfair trial in the case. Do you remember that?

Mr. SANFORD. I continue the same objection to the leading nature of the question.

The WITNESS. I have an impression that Judge Shepherd suggested the idea that their duties might stop with the Circuit Court, and I think either Mr. Brown or yourself, or perhaps both of you, combatted that idea, but I would not be positive as to that part of it.

Q. (By Mr. PRITCHARD.) Now, with respect to this apprehension that you say you personally had, that Mr. Sanford has asked you about, that there might be danger of lynching. I will get you to state whether or not that apprehension was based upon the theory of an appeal in a case merely for delay, and in which there was no reversible error?

Mr. SANFORD. I object to that as leading and suggestive and incompetent.

The WITNESS. Well, I do not know that that limitation occurred to my mind particularly, one way or the other.

Q. (By Mr. PRITCHARD.) After this trial of Johnson, when there were, as you say, several hundred people there at the court-house, and after his conviction, which occurred on the 9th of February, did you know, or did you understand, that Johnson was removed from Chattanooga to Knoxville?

A. I heard so. I probably saw it in the newspapers that he had been.

1961 Q. And he was kept away until something like ten days before the day of his execution?

Mr. SANFORD. I object to the leading and suggestive nature of that testimony.

Q. (By Mr. PRITCHARD.) If you do not remember it, I do not care about it. That is all admitted by matter of record in this case, and I am not going to base any question on it at all. I withdraw it. I do not care anything about it except to get up to the point of the fact that I want to ask about.

Mr. SANFORD. You do not understand the nature of the objection. You understand that I may want to cross-examine the witness as to the accuracy of his recollection, in giving dates.

Q. (By Mr. PRITCHARD.) I will ask you whether, after Johnson was brought back here, be it ten days or a longer or a shorter time, after Johnson was brought back here, and before this lynching on the 19th of March, whether you saw anything in public conditions, manifestations, conversations, or demeanor of citizens, indicative of an intention to lynch him?

A. I have no recollection of having seen any indications of a disposition to lynch him after he was sentenced by Judge McReynolds.

Q. Were you in the city the night of the lynching?

A. I was.

1962 Q. What time did you go home?

A. I presume I went to supper about the usual time; a little before dark.

Q. Where did you live?

A. 606 Georgia avenue.

Q. In going from your office to your residence, how do you go; on what streets?

A. I usually go up 7th street.

Q. Do you recall how you went that evening?

A. I do not.

Q. Do you remember whether you sat up late, or what time you retired, or where you were that evening?

A. I remember that after supper I went to my room, which is in the rear part of the house, along sometime between 7 and 8 o'clock, and read until about 10 o'clock, and then retired.

Q. When did you first know or hear of the lynching?

A. I first learned of the lynching from the Chattanooga Times, which I found in the hall next morning when I came down stairs.

Q. You heard nothing of it that night?

A. No, sir; I did not.

Q. And you knew nothing of it until the next morning?

A. I did not. I only remember what I did that night because of the fact that I recalled, after the lynching had occurred, of how various persons were giving their versions of where they were

1963 and what they knew about it, as to where I was.

Recross-examination by Mr. SANFORD:

Q. Do you remember seeing a signed statement from Mr. Thomas that was published in the Chattanooga Times the day after it was

decided that Johnson would not appeal, under the heading "W. G. Thomas tells why the case will not be appealed?"

A. I read a statement in the Times which purported to be signed by Mr. Thomas.

Q. The next day?

A. Yes.

Mr. PRITCHARD. That is all the witnesses we have now.

Mr. COOKE. I have a witness here.

HOUSTON GIBSON, a witness produced on behalf of the defendant Jerry Gibson, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. COOKE:

Q. What is your age?

A. 15 years old?

Q. Where do you live?

1964 A. Highland Park.

Q. Is Highland Park a part of Chattanooga, or a suburb of Chattanooga?

A. Yes, sir.

Q. Are you a son of the defendant Jerry Gibson?

A. Yes, sir.

Q. How far is your home from the county jail?

A. I couldn't tell you that. It is about two miles and a half.

Q. Do you remember the lynching of Ed. Johnson for rape?

A. Yes, sir.

Q. Do you remember when that happened?

A. Yes, sir.

Q. Was your father then the night jailer?

A. Yes, sir.

Q. State whether or not you left home with your father on the night of the lynching of Ed. Johnson.

A. Yes, sir; I did.

Q. What time did you leave home?

A. I left home about 5.30.

Q. Did you and your father start from home about 5.30.

A. Yes, sir.

Q. And it is about two miles and a half, you say, from your house to the jail?

A. Yes, sir.

Q. How did you go?

1965 A. How did we come?

Q. Yes.

A. We come right down Montgomery, and right up Market street, and right up Georgia avenue.

Q. I mean, were you walking or driving?

A. Driving.

Q. What were you driving?

A. A horse.
Q. And buggy?
A. Yes, sir; a buggy and horse.
Q. Where did you drive to?
A. We drove to the jail.
Q. To the rear or the front.
A. To the front.
Q. Who did you first see when you got to the jail?
A. The day jailor, Mr. Brown.
Q. What, if anything, occurred. What did he do?
A. He handed the keys to my father over the fence.
Q. He handed the keys to your father over the fence?
A. Yes, sir.
Q. Did your father then get out of the buggy?
A. Yes, sir.
Q. And go into the jail?
A. Yes, sir.
Q. Where did you go?
A. I went around to put up the horse.
Q. Where did you put up the horse?
A. At the stable behind the jail.
Q. Then what did you do after you put up the horse?
1966 A. I went up inside of the jail.
Q. Did you join your father?
A. Yes, sir.
Q. Who was present? Who was in the jail when you came in with your father?
A. There wasn't nobody but me and him.
Q. Did your father make the rounds, and did you go with him?
A. Yes, sir.
Q. Do you remember a white woman named Ellen Baker, who was in the jail charged with moonshining?
A. I remember a white woman that was in the hospital cell. I do not know what her name was.
Q. Where was that hospital cell?
A. On the floor Ed. Johnson was on.
Q. On the floor Ed. Johnson was on?
A. Yes, sir.
Q. I will ask you if you, when you went around with your father, went to that cell?
A. I went to it, and he went around downstairs.
Q. He went out and went on the rounds downstairs.
A. Yes, sir.
Q. What did you do at that cell?
A. I talked to this woman, and she wanted me to bring a piece of quilting, and I talked to her about it.
Q. She wanted you to bring pieces for her to quilt?
Mr. SANFORD. I object to the conversation between the wit-
1967 ness and Ellen Baker as incompetent, immaterial and hearsay.

Q. (By Mr. COOKE.) Was Ellen Baker in this hospital cell when you were talking to her?
A. Yes, sir.
Q. Where were you?
A. I was on the outside. She was locked up.
Q. She was locked up?
A. Yes, sir.
Q. What kind of a door is there to that hospital cell?
A. A straight door.
Q. Is it solid or barred?
A. It is barred.
Q. So there are openings in the bars that you can see and talk through?
A. Yes, sir.
Q. How long did you talk to her, if you know?
A. I talked to her about 25 minutes.
Q. What did you do then?
A. I went outside with my father. My father came back up there.
Q. What do you mean by outside?
A. Outside in the office.
Q. Outside of the jail proper and into the office of the jail?
A. Yes, sir.
Q. That is all in the same building, is it not?
1968 A. Yes, sir.
Q. How long did you stay there at the jail with your father?
A. I stayed there until about 8.30 or afterwards.
Q. Where did you go?
A. I went to the opera house.
Q. You went to the opera house?
A. Yes, sir.
Q. Did you go to a show?
A. Yes, sir.
Q. State whether or not anybody was there at the jail while you were there with your father?
A. No, sir; there was not.
Q. You did not see anybody?
A. No, sir.
Q. And then you went to the show at the opera house?
A. Yes, sir.
Q. Did you come back to the jail after the show was over?
A. Yes, sir.
Q. What had happened in the meantime? What did you learn had happened?
Mr. SANFORD. I object to any statement as to what he was informed or learned had happened, as hearsay, purely.
Q. (By Mr. COOKE.) Go ahead and answer.
1969 A. They had broke down the doors and got Ed. Johnson out and lynched him.

Q. And that is how you know that was the night you talked to Ellen Baker?

A. Yes, sir; Monday night.

Mr. SANFORD. I object to the question as leading.

Cross-examination by Mr. SANFORD:

Q. What is your first name?

A. Houston.

Q. Houston?

A. Yes, sir.

Q. How often did you go to jail with your father?

A. I went Monday night, and sometimes I would go through the week. I would go Saturday night, and sometimes on Monday night, and through the week. That is as often as I went.

Q. You would generally go once or twice a week?

A. Yes, sir.

Q. When had you been the last time before this night?

A. Saturday night.

Q. What time did you go Saturday night?

A. About five o'clock.

Q. How do you happen to remember it?

A. I remember it by the other night. We got there later Monday night.

1970 Q. What was the last time before Saturday night that you went there?

A. The Saturday before the last.

Q. What time did you get there that night?

A. At 6 o'clock, and stayed all night.

Q. You remember the hours you got there all those nights, do you?

A. Yes, sir.

Q. When was the last Monday night before that you had gone there?

A. The last Monday night before?

Q. Yes; before the night of the lynching. Had you ever been there on Monday night before?

A. No, sir; I had not went then. They attempted to lynch him before then, and papa wouldn't let me go. He was afraid there would be some more trouble.

Q. I am asking about the Monday of the week before the lynching occurred. Did you go there?

A. Where did I go?

Q. Did you go to the jail the week before the lynching occurred? Were you there that Monday?

A. Yes.

Q. What time did you go that night?

A. Every night I would go, I would go about half past four or five. No sooner, anyway.

Q. Were you at school at that time?

A. No, sir. I came out of school at half past two and three.
1971 Q. What school did you go to?
A. The Orange Grove School.
Q. Were you in school at that time?
A. At half past two——
Q. I do not mean at that hour, but were you going to school at that time?
A. Yes, sir.
Q. Had you ever talked to this woman before?
A. Yes; I talked to her about once before when she first got in there.
Q. You talked to her about once before?
A. Yes, sir.
Q. Had you ever talked to Ed. Johnson?
A. No, sir; I don't remember of it.
Q. How long had that woman been in there?
A. I couldn't say.
Q. You say when she first got in there. How long before this had she first got in there?
A. She got in there about four days before, and she wanted me to get some pieces to quilt in. She waited for a long time for me to bring the pieces, and talked to me the next night.
Q. How long before this particular night was it?
A. About five nights.
Q. About five nights before?
A. Yes, sir.
Q. Were you there Wednesday night of the week before? Was that on Wednesday?
1972 A. No, sir; it was about five days when she got in there. I don't know when she got in there.
Q. You do not know when she got in there?
A. No, sir.
Q. And you can not tell how long that was before?
A. No, sir.
Q. Have you ever talked with your father about this thing, about what happened that night?
A. No, sir; I have not.
Q. You have not?
A. No, sir.
Q. Has he ever asked you what you remembered about it, or talked to you about it?
A. No, sir.
Q. Has anybody asked you what you remembered about it?
A. No, sir.
Q. Who did you first talk to of what happened that night?
A. Who did I first talk to?
Q. Yes.
A. I didn't talk to nobody about it.

Q. And nobody asked you at all about what you remembered about what occurred that night? You have never talked to your father about it?

A. No, sir.

Q. Or to anybody else?

A. I don't think I have. If I have, I never thought of it.

1973 Q. You never have?

A. No, sir; I don't think so.

Q. Does your father live at home?

A. Yes, sir.

Q. He comes home every night?

A. Yes, sir.

Q. Or every day?

A. Yes, sir.

Q. You see him at meal times?

A. Yes, sir.

Q. And he has never asked you what you remember about that?

A. No, sir.

Q. How do you remember what time he left there?

A. Left the jail?

Q. Yes.

A. I looked at the clock. The clock is on the inside, in the office.

Q. You remember looking at the clock?

A. Yes, sir. The show starts at 8.30, and I was late, I know.

Q. Where is that clock?

A. The clock is inside. Here is the little office here [indicating], and another office in there [indicating], and the clock is hung up on the wall.

Q. Were there any other deputy sheriffs there?

A. No, sir.

Q. Any other jailers?

1974 A. No, sir.

Q. Was Captain Shipp there?

A. I never seen him, if he was.

Q. You did not see anybody?

A. No, sir.

Redirect examination by Mr. COOKE:

Q. Do you know this colored constable, Joe Franklin?

A. No, sir.

Q. You do not know him?

A. No, sir.

Q. Mr. Sanford asked you if you had ever talked to anybody about this case. The attorney who is now examining you asked you some questions before you went on the stand this morning, did he not?

A. Yes, sir.

Mr. COOKE. I suggest that we take a recess until 2 o'clock. We have no more witnesses that we can examine before dinner.

A recess was thereupon, at 11.55 o'clock a. m., taken until 2 o'clock p. m.

1975 AFTER RECESS.

The hearing was resumed at the expiration of the recess.

Mr. HOOD. We will call Mrs. Nellie Ward, in behalf of the defendant, Frank Ward.

Mrs. NELLIE WARD, a witness produced on behalf of the defendant, Frank Ward, being first duly sworn by the commissioner, according to law, testified as follows:

By Mr. HOOD:

Q. What is your name?

A. Nellie Ward.

Q. Are you the wife of the defendant, Frank Ward?

A. Yes, sir.

Mr. SANFORD. I desire to object to the testimony of this witness on the ground that the wife of one of the defendants is not a competent witness in his behalf.

Mr. HOOD. I do not know how that is, but Judge Shepherd insists that the wife is competent.

Mr. SANFORD. We reserve the objection.

Q. (By Mr. HOOD.) Where do you live?

A. 506 Chestnut street.

1976 Q. Do you remember the time of the lynching of Ed. Johnson?

A. Yes, sir.

Q. Where did you live at that time?

A. 1057 Market street.

Q. I will ask you to state whether or not that was near Barnes' saloon. Is it over Barnes' saloon on Market street?

A. Yes, sir.

Q. Where were you that night?

A. I was home.

Q. I will ask you to state where your husband, Mr. Ward, was that night.

A. Well, he was at home for a time, and right about home.

Q. What time did you have supper that evening?

A. Between five and six, somewhere. I don't just remember now.

Q. After supper, say from six o'clock until 11, do you know where Mr. Ward was? Did you see him between the hours of six and 11 that evening?

A. Yes, sir.

Q. Where did you see him?

A. I seen him coming from the restaurant down the street, coming up towards the saloon.

Q. Where is the restaurant with reference to Barnes' saloon?

A. It is just one door in between the saloon and the restaurant. I forget the number.

1977 Q. You mean south of the saloon?

A. Yes, sir.
Q. Where did he go when you saw him?
A. He went in the saloon.
Q. What time was that, Mrs. Ward?
A. That was about half past nine, I think it was—between 9 and 10 somewhere. I don't just remember when.
Q. I will ask you to state whether or not you saw him after that time.
A. Yes, sir; I saw him just after the doors closed. I heard Mr. Barnes close his saloon, and heard the doors close, and I went to the window and looked out, and I saw Mr. Ward standing out on the pavement in front of the saloon with some man.
Q. That was at what hour? What hour was that?
A. That was just about 10 o'clock that I heard the doors close, you know, and I stepped to the window to see if I could see Mr. Ward.
Q. The saloon closed at 10 o'clock?
A. Yes, sir.
Q. That is an ordinance of the city, that they close at 10 o'clock?
A. Yes, sir.
Q. Do you know who the man was that you saw with him on the sidewalk?
A. I do not, but I thought it was Mr. Mitchell.
Q. What time after that did you see him?
1978 A. I don't thing I saw him any more then until he came up and went to bed.
Q. About what time was that?
A. About 11 o'clock—between 10 and 11, somewhere close to 11.
Q. I will ask you to state what was his condition that night?
A. Well, he was very much intoxicated.
Q. I will ask you to state whether or not he stayed at home that night?
A. Yes, sir. He did not leave any more than night.
Q. When was the first time you heard of the lynching of Ed. Johnson?
A. The next morning.
Q. How did you hear about it?
A. Mr. Ward went downstairs and came up with the paper and said that Ed. Johnson was lynched last night, and he was very much surprised to hear it.
Q. Did he read it to you?
A. Yes, sir. He came in the kitchen where I was getting breakfast and sat down and read it to me. That was the first we heard of it.
Q. How do you know, or fix it in your mind, Mrs. Ward, that this was the same night?
A. Well, he was drinking more——
Q. (Continuing.) That Ed. Johnson was lynched?
1979 A. He was drinking more then than he had usually been, and that morning when he came up and told me about it I spoke to him about drinking so much, you know.

Q. You gave him a lecture.
A. Yes, sir.
Q. That was the next morning, at breakfast?
A. Yes, sir.
Mr. SANFORD. I object, especially, to all conversations between the husband and wife as hearsay and incompetent.
Q. (By Mr. HOOD.) What time did you have breakfast the next morning?
A. Between five and six.
Q. I will ask you what Mr. Ward did after breakfast? What did he do?
A. After he eat his breakfast he went in and laid down, and slept, until about 9 or 10 o'clock—somewhere between 9 and 10.
Q. I will ask you to state if there are front windows in your residence up above Mr. Barnes' saloon?
A. Yes, sir.
Q. Where were you at the time you saw him down there on the street?
A. I went to the front window, looking down.
Q. If you remember, how long did Mr. Ward stay at home the next morning?
A. Well, he stayed at home until about 10 o'clock, I suppose.
1980 Q. Did he work that day?
A. No, sir; he didn't work that day.
Mr. SANFORD. I reserve my objection to the competency of Mrs. Ward's testimony. I do not care to cross-examine.
Mr. HOOD. I had another witness or two, but they are not here. They are not under subpœna, but they promised to come and maybe they will be here directly.

W. A. MEYER, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Are you a son-in-law of Captain Shipp?
A. Yes, sir.
Q. Where do you reside?
A. On Lookout Mountain in the summer. I board at Captain Shipp's in the winter.
Q. Did you board at Captain Shipp's last winter?
A. Yes, sir.
Q. Were you there during last March a year ago? You boarded there?
A. Yes, sir.
Q. Are you a brother-in-law of Sam Hardin?
A. Yes, sir.
Q. What is your wife's given name?
1981 A. Carrie.

Q. What is Mr. Hardin's wife's name?
A. Lillie.
Q. They are both daughters of Captain Shipp?
A. Yes, sir.
Q. I will ask you whether or not it frequently occurred that you and your wife and Mr. and Mrs. Hardin and Captain and Mrs. Shipp were at the table at dinner, breakfast, or supper together?
A. Yes, sir.
Q. Did you know a negro girl that Captain Shipp had there by the name of Julia Wolford?
A. Yes, sir.
Q. How do you spell her name?
A. W-o-l-f-o-r-d—I think it is. I am not positive about the spelling of it.
Q. But you knew the negro?
A. Yes, sir.
Q. I will ask you to state whether, at any time, when the parties I have mentioned were at dinner or at any other meal at Captain Shipp's house in Chattanooga, you heard Captain Shipp make a remark in substance that if there was a stay of proceedings in relation to Ed. Johnson he would be lynched?
A. No, sir; I did not.
Q. I will ask you to state whether or not you heard Captain Shipp make any remark, in substance, that if an appeal was granted
1982 to Ed. Johnson he would be lynched or mobbed?
A. No, sir; I did not.
Q. I will ask you to state whether or not you heard Captain Shipp make any such remark at any other time; at his residence or anywhere else?
A. No, sir; I did not.
Q. I will ask you whether Captain Shipp, in your presence, at the dinner table at his house, or elsewhere, ever made any remark in language or in substance, that if the execution would be a stay Ed. Johnson would be mobbed?
A. No, sir; I did not.
Q. Do you remember that you were boarding at Captain Shipp's the week after Ed. Johnson had been taken to Knoxville, or had a hearing before Judge Clark?
A. Do I remember that I was there?
Q. Yes, sir.
A. Yes, sir; I was there.
Q. Did any such conversation, or anything like that, occur; or did you hear Captain Shipp make any such remark at any time during that week?
A. No, sir.
Q. Or at any other time near that time?
A. No, sir; I did not.

Q. On the day that Ed. Johnson was lynched, was he in any way the subject of any conversation in Captain Shipp's household, or in your presence and hearing?

A. No, sir; not that I know of.

1983 Did you at any time hear any intimation or suggestion of any sort from Captain Shipp that he knew Johnson would be lynched, or suspected that he would be lynched or mobbed?

A. No, sir; I did not.

Q. What business are you in?

A. The jewelry business.

Q. On Market street?

A. Yes, sir.

Q. I will ask you whether or not Captain Shipp's wife is very ill?

A. Yes, sir.

Q. And whether or not she is able to be in attendance at this trial?

A. She is not.

No cross-examination.

Mrs. W. A. MEYER, a witness produced on behalf of the defendants, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. COOKE:

Q. Are you the daughter of Captain Shipp?

A. Yes, sir.

Q. And the wife of Mr. W. A. Meyer, the jeweler?

A. Yes, sir.

1984 Q. Do you and your husband live at your father's house in the winter time?

A. Yes, sir.

Q. State whether or not you and your husband lived at your father's house during the spring of 1906, when Ed. Johnson was lynched?

A. Yes, sir; we did.

Q. How long had you been living there?

A. Since October, I believe it was.

Q. Were you there all the time during the month of March?

A. I was.

Q. Were you present with the family at meals?

A. Yes, sir.

Q. What was the name of the cook you worked for your father at that time?

A. Julia Wolford.

Q. State whether or not at any time after Ed. Johnson's case was tried you ever heard your father state at the table, when there were present you and your husband and Mr. Sam Hardin and his wife, and your father and mother, or at any other time, that if the Supreme Court granted Ed. Johnson an appeal he would be lynched?

A. He did not.

Q. He never made any such statement?

A. No, sir.

Q. Did you ever hear your father make such a statement?

A. Never.

1985 Q. Did you ever hear your father on that occasion or any other occasion make any statement that he feared or had any reason to apprehend that Ed. Johnson would be lynched?

A. I never did.

Q. State whether or not you remember the day of the lynching of Ed. Johnson. Do you remember the time he was lynched?

A. I do.

Q. State whether or not the day of that lynching your father made any such remark at the table as this: "Well, the Supreme Court has granted an appeal in the Johnson case."

A. No, sir.

Q. You never heard him make any such statement?

A. I never heard him; no, sir.

Q. Where is your mother?

A. At the present time?

Q. Yes.

A. She is in a hospital.

Q. Very ill?

A. Yes, sir.

Q. Did you ever hear Captain Shipp say if the execution would be a stay, Ed. Johnson would be mobbed?

A. I did not.

Q. What became of Julia Wolford?

A. She took French leave, as they say. I do not know what did become of her.

Q. Do you know why she left?

1986 A. I have no idea.

Q. Did she give you or your mother or father any notice of quitting?

A. None whatever.

Q. When did she quit the service of your father?

A. I do not remember just the date, but it was on Saturday night. She was to come Sunday morning. She left Saturday night and we never have seen her since.

Q. You say she was to come Sunday morning.

A. Yes; she made every preparation to come Sunday morning and did not return.

Q. Did she give any notice of quitting?

A. None whatever.

Q. You looked for her back Sunday morning and she did not come?

A. No, sir.

Q. You do not remember the date of that?

A. No, sir.

Q. You do not remember whether it was before or after the lynching of Ed. Johnson?
A. Oh, it was after the lynching.
No cross-examination.

1987 Mrs. LILLIE S. HARDIN, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. COOKE:

Q. Are you a daughter of Captain Shipp?
A. Yes, sir.
Q. What is your husband's name?
A. Sam M. Hardin.
Q. Where do you live?
A. In Rome, Georgia.
Q. Do you remember the time of the lynching of Ed. Johnson?
A. I do.
Q. Where were you and your husband at that time?
A. We were here in Chattanooga.
Q. You were here in Chattanooga?
A. Yes, sir.
Q. Where were you staying?
A. Up at my father's.
Q. How long did you stay at your father's house?
A. We had been there about two months, on and off. We would go down to Rome, and then come back.
Q. What two months did you stay at your father's house in Chattanooga?
A. February and March.
Q. Did you know the cook who worked for your family at that time?

1988 A. I do.
Q. What was her first name?
A. Julia Walford.
Q. She was a colored girl?
A. Yes, sir.
Q. Do you know when she left?
A. It was Saturday night, I believe, but I cannot recollect the date.
Q. Do you know why she left?
A. No, sir.
Q. Did she give any reason for leaving?
A. She did not.
Q. Did she give any notice?
A. No, sir.
Q. I will get you to state whether or not you ever heard your father make any such statement as that if the case of Ed. Johnson would be a stay, he would be mobbed?

A. I never did.

Q. State whether or not you ever heard your father say, on the occasion of the Monday morning after the return from Knoxville, when he took him up to Knoxville, or upon any other occasion——

A. I never did.

Q. (Continuing.) That if the Supreme Court granted Ed. Johnson an appeal, he would be lynched?

A. No, sir; I did not.

Q. You never heard any such statement?

A. No, sir.

1989 Q. Did you ever hear your father make any such statement as could be construed into any such meaning as that?

A. No, sir.

Q. At the dinner table or at the supper table or at the breakfast table?

A. He never did.

Q. Did you ever hear him intimate that there was any danger of Ed. Johnson being lynched, at the table?

A. No, sir.

Q. Did you ever hear him state, on the day Ed. Johnson was lynched, or on any other day, that the Supreme Court had granted an appeal in the Johnson case?

A. I do not remember it.

Q. Did he ever tell you anything about the Johnson case?

A. He never did.

Q. Did he ever talk about the Johnson case at the table in your presence?

A. He never did.

Q. Where is your husband now?

A. He is in Rome.

Q. And your mother is ill in the hospital?

A. Yes.

No cross-examination.

1990 JEREMIAH GIBSON, a witness produced on behalf of the defendant, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. COOKE:

Q. What is your name?

A. Jerry Gibson.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. How old are you, Mr. Gibson?

A. 62.

Q. Where were you born?

A. In North Carolina.

Q. When did you come to Tennessee?

A. In 1867.

Q. Where did you come from?
A. Winston-Salem was my county seat.
Q. Have you been a Confederate soldier?
A. Yes, sir.
Q. How long did you serve in the war?
A. Three years, I think, is my recollection.
Q. Did you get an honorable discharge?
A. Yes, sir. I got a parole.
Q. Were you with the army until the close of the war?
A. Yes, sir.
Q. And then you came to Chattanooga?
1991 A. I was in prison. That is how they paroled me and sent me home. I was in prison, and returned back to Richmond, and then I was paroled and sent home.
Q. Are you a man of family?
A. Yes, sir.
Q. Where do you reside now?
A. In Highland Park.
Q. Is that a suburb of Chattanooga?
A. Yes, sir.
Q. A part of Chattanooga now?
A. It is not incorporated, but it is considered a suburb.
Q. How far is your home from the court-house and jail?
A. I suppose about two miles.
Q. What was your occupation during the months of February and March, 1906?
A. I was assistant jailor, and worked at night.
Q. You worked at night?
A. Yes, sir.
Q. Did you have charge of the jail at night?
A. Yes, sir.
Q. For Captain Shipp?
A. Yes, sir.
Q. Do you remember Ed. Johnson, who was lynched?
A. Yes, sir.
Q. What family have you, Mr. Gibson?
A. Well, I have got six children, but only two of them are living with me. The others are grown up, and moved off.
1992 Q. Your son, Houston Gibson, was examined this morning, was he not?
A. Yes, sir.
Q. He is your youngest son, is he?
A. Yes, sir.
Q. Does he come to the jail with you sometimes, or did he at that time?
A. Yes, he came with me that evening.
Q. The evening of the lynching of Ed. Johnson?
A. Yes, sir; the evening before it occurred that night.

Q. State whether or not he frequently came to the jail with you in the evenings?
A. Yes, sir.
Q. Did you walk or drive in from your home, usually?
A. Sometimes I would come in a buggy, and sometimes I came on the street car, if he came with me.
Q. How did you come the night of the lynching?
A. I came in a buggy.
Q. And your son Houston came with you?
A. Yes, sir.
Q. How old is he?
A. He is 15; nearly 16.
Q. Where did you come to; what part of the jail? Whereabouts, as to the entrance?
A. I came to the jail and drove in on the far side of the jail, so I could take my buggy and horse down to the stable.
1993 Q. Who did you see when you got there?
A. I seen George Brown.
Q. Was he the day jailor?
A. Yes, sir.
Q. Did he have any conversation with you?
A. None at all. He just handed me the keys.
Q. Where were you when he handed you the keys?
A. Down at the lot; the jail lot.
Q. Where was he?
A. He was standing on the inside of the lot.
Q. He was standing on the inside of the lot?
A. Yes, sir.
Q. And you were on the outside?
A. Yes, sir.
Q. Did you have any further conversation with him after he handed you the keys?
A. No.
Q. Where did you go then; when he handed you the keys?
A. I went inside the jail office.
Q. You went inside?
A. Yes, sir.
Q. Inside of the jail?
A. Yes, sir.
Q. Where did your boy go?
A. He went down to put the horse up.
Q. How long did it take him to put the horse up?
1994 A. I suppose thirty minutes, or maybe twenty, or thirty.
Q. Then where did he go?
A. He came up to the jail.
Q. Did he join you?
A. He came up there and stayed with me until——
Q. After he came to the jail, what did you do?

A. Well, the first thing I done after I went in, I went around to see if my locks, my jail doors, was closed up. I took my rounds.

Q. Did you go your rounds?

A. Yes, sir.

Q. Did he come up with you as far as the top floor where Ed. Johnson was confined?

A. My recollection is he went in with me.

Q. Just tell now, about what you did. Tell us in orderly sequence.

A. I think he went in with me, and I think he went up the steps, and I went down the steps. It is a four-story building, and I went down.

Q. Where did you go? All around?

A. Yes.

Q. And inspected the jail?

A. Yes, sir.

Q. I will ask you if there were any chains on the jail doors that night?

A. There was not.

Q. Had there been any chains on the jail doors since Johnson was convicted?

1995 A. Well, I don't recollect about that, whether they had or not, but there was not that night.

Q. When the chains were on the doors you could not make your rounds, could you?

A. I couldn't get in, unless we have to leave the cell of the prisoner inside, so that he could unlock it.

Q. So that the prisoners inside control whether or not anybody could get in when the chains were on the door?

A. Yes.

Q. What sort of chains were those, Mr. Gibson?

A. Oh, it is a large, short-link log chain, I would call it.

Q. What sort of a lock was used with those chains?

A. We used—well, I think a brass lock, a padlock of some kind.

Q. A substantial lock?

A. Yes, sir; substantial.

Q. What sort of doors are those doors around which the chains went?

A. They chained the circle.

Q. You speak of the circle. What is that circle? A circular swing door that has one entrance in it?

A. Yes, it swings around, and when you bring it opposite the door, you step in the circle. When you want to land a prisoner, or anybody else, you have to pull the circle around, and turn the

1996 opening to that door opposite, so as to go in.

Q. So that circle is inside of a circle, is it?

A. No, it is just a circle.

Q. That is a circular door, then; which is made of steel bars, with an entrance in it, so that when it is turned around towards the hall, the party in the hall can step inside of the circle?

A. Yes, sir.

Q. And then the circle is swung around to an opening in the opposite side which will let the party out of the circle into the cell. Is that correct?

A. Yes. The opening is in the circle; and whenever you reverse it around, that would make it so they can step out the other way.

Q. These chains were entwined in and out of the steel bars of the circle, and the outside circle, and then locked on the inside, were they, when you had a chain?

A. Yes, when the chain was on them.

Q. State whether or not it was a good deal of trouble to move those chains.

A. Well, yes; it made considerable noise and it took about two men to pull the chain out.

1997 Q. You say there were no chains on any of the circles in the jail that night?

A. I did not see any.

Q. You would have seen them if you went in where they were, would you not?

A. Yes.

Q. Did you go in them all that night?

A. I went in all the stories.

Q. You could not have gone in if the chains had been on, could you?

A. No—yes, I could have done it, if there had been provision left——

Q. You could not do it without moving the chains?

Mr. SANFORD. Let him finish. You could have done it if what?

The WITNESS. I could have done it by letting out the prisoners on the inside, and unlocking it.

Q. (By Mr. COOKE.) What floor of the jail was Ed. Johnson confined on?

A. On the fourth floor, counting from the bottom.

Q. Who was confined on the floor with him, if anybody?

A. There was not anybody on that floor with him, I don't think. There was a woman——

Q. Are there any other cells outside of the prison cells on each floor?

1998 A. There was just two parties up there; woman prisoner was there; a woman prisoner was in what we call the hospital cell and Ed. Johnson was in the main hall cell.

Q. How many of those hospital cells are there on that floor?

A. Two.

Q. Are they opposite each other?

A. Yes; they are opposite.

Q. And outside of the circle—you do not have to go through the circle which you have described to get into the hospital cells, do you?

A. No. That is just one door.

Q. What was that woman prisoner's name?

A. I think it is—it seems to me her name was Baker.
Q. What was she confined for?
A. Why, for selling whiskey.
Q. Was she a federal prisoner?
A. Yes, sir.
Q. Was she the same woman who testified in this case, or do you know?
A. Yes; she testified here.
Q. You say she was in a hospital cell on the same floor Ed. Johnson was on?
A. Yes.
Q. What was the other hospital cell being used for at that time? Was it empty, or was there anybody in it?
A. The door was standing open to that.
Q. State whether or not Ellen Baker was locked up in her cell.
1999 A. Yes; she was.
Q. Mr. Gibson, what time did you get to the jail that evening of the lynching?
A. I don't know the exact time. I was a little late. I think, maybe, it was 6.15 or 6.20.
Q. You were a little late?
A. Yes.
Q. What time were you due there?
A. I was due there at 6 o'clock.
Q. How do you happen to know that you were a little late?
A. Well, I know that by—I drove fast to get there. I knew I was late and that Mr. Brown was waiting to hand me the keys.
Q. He handed you the keys over the fence?
A. Yes.
Q. How long did your boy, Houston, stay there at the jail with you that evening, Mr. Gibson?
A. Why, he stayed there, I think, until about 8.25 or 8.30—something between 8 and 9 o'clock.
Q. What became of him then?
A. He went to the opera house.
Q. Who was there with you then?
A. No one at all, when he left.
Q. Was there anybody there with you at all that evening?
A. No; I don't recollect of a single person being there.
2000 Q. Do you know Joe Franklin, the colored constable who testified in this case?
A. Yes.
Q. Did he bring a prisoner there at 7 o'clock that evening?
A. He did not.
Q. Did he bring any prisoner there that night at all?
A. No.
Q. Did you see Joe Franklin at the jail that night?
A. I did not.

Q. Were there any deputies there having a supper and drinking beer?

A. Not that I—I know there was not, but I never seen anybody.

Q. You never saw anybody?

A. No, sir.

Q. State whether or not you would have seen the deputy sheriffs if they had been there that evening?

Mr. SANFORD. I object to that as incompetent.

Mr. CLIFT. Go on and answer.

The WITNESS. Yes, I would have seen it.

Q. (By Mr. COOKE.) Where were you when this mob came?

A. I was upstairs, opposite that Baker woman's cell.

Q. You were upstairs; that is, the fourth floor?

A. Yes.

Q. Was the front door open?

A. Her door?

Q. No; the front door of the jail?

2001 A. No.

Q. What was the situation of that first iron door that you have to go through to get into the jail, as to whether or not it was locked.

A. It was locked.

Q. Who had locked it?

A. I locked it. I always locked it when I went in.

Q. You locked yourself in?

A. Yes.

Q. And then you had gone upstairs?

A. Yes.

Q. What did you go upstairs for?

A. She was wanting something—I think it was water or medicine or something that way, and I had to give it to her. There was no water in her cell and I had to draw it in a bathroom and hand it in to her.

Q. There was no running water in her cell?

A. No.

Q. Was there running water in the other cells?

A. Yes. Not in the cells, there was not, but they had water where they could get to it.

Q. The water was in the corridors, so that the prisoners in the regular cells could get to the water by going out in the corridor?

A. I want to explain that. There was a sink in her closet, you know, but not for drinking water.

Q. There was no hydrant?

A. No.

2002 Q. So you were going up there. What was your first knowledge of the mob?

A. The first thing I heard, I heard a lot of men come, making a big noise, and I heard one of them say, "We are going to have that damn nigger."

Q. What did you do then?

A. Well, I then stepped over into this hospital cell where there was not anybody staying and sat down on a lounge.

Q. What was your object in going in there?

A. I knew if I went downstairs they would kill me or take the keys, and I thought I would better protect the jail by staying inside and keeping the keys.

Q. You say you heard one man say, "We are going to have that nigger?"

A. Yes.

Q. What other noises did you hear, if any?

A. Then the next thing, just in an instant, they commenced hammering the door.

Q. They commenced hammering the door?

A. Yes.

Q. State whether or not they broke down that door?

A. Yes, they broke it in.

Q. What did they do when they broke down the door?

A. When they broke down the door they came rushing up the steps, a crowd of them; I don't know how many, because I was sitting back in the room; and they commenced pounding on the door that led into Ed. Johnson's cell.

2003 Q. They had not discovered you at that time, had they?

A. No.

Q. Go on and tell about it.

A. Then, I suppose, in a very few minutes, they was calling for the jailer, to know what had went with the jailer, where he was at. They wanted the keys, and they came in this room, where I was sitting on the bed, and then they stayed with me. That is, they first got the keys.

Q. How did they get the keys? What did they do? What did they say when they came in there?

A. They wanted to know what I was hiding for. They said I was trying to protect the nigger.

Q. Did they treat you gently; did they handle you with kid gloves, or how did they handle you? Tell about it.

A. They pulled me around considerably.

Q. How long was it before they got the keys away from you?

A. Oh, I suppose they got them in probably five or ten minutes. They just run their hands into my pockets.

Q. They took the keys from you by force, did they?

A. Yes.

Q. Did they disarm you? State whether or not you were armed.

A. Yes, I had a pistol.

Q. What happened to your pistol?

A. They had everything I had in my pockets, I think,
2004 then.

Q. They surrounded you and disarmed you?

A. Yes, sir.

Q. What happened then? What did they do with you?

A. Then they had a group of three men that stayed with me. They stayed in that cell, or in that room, and they stood guard with me and kept me that way until the jail was broke open and Ed. Johnson was taken.

Q. Were they armed?

A. Yes, sir.

Q. What did they have?

A. Pistols.

Q. Did any of them have rifles?

A. I don't recollect seeing a rifle up there.

Q. You say three of them stayed in there with you?

A. Yes.

Q. Did they take you downstairs after awhile?

A. Yes; they just taken me anywhere they wanted me to go.

Q. Where did they take you?

A. They took me downstairs. They took me over, first, and they said I could unlock that lock.

Q. Tell us about it.

A. I said "I can't do it. You have done broke this lock, and I couldn't unlock it if you were going to kill me in a minute. I couldn't unlock this lock." I tried to explain it to them that way, and they taken the keys and tried it theirselves.

2005 Q. Did they unlock it?

A. No.

Q. They had mashed the lock before they took the keys away from you, had they?

A. That is the way.

Q. And the key would not unlock the lock when they had gotten it from you?

A. Yes.

Q. Did you know any of those men that handled you that night?

A. No, sir; I did not. They seemed to be—they were strangers to me, and the same men stayed with me. Sometimes they would not let me go anywhere at all unless they went, you know.

Q. Did they say anything to you, much? Did they talk to you?

A. Well, they talked to me about not unlocking the door, and said I could do it. They said I was lying and said they wasn't the keys. They said I knowed they wasn't the keys. They said, "There is another set of keys there somewhere."

Q. Was there any other set of keys?

A. There was not.

Q. They accused you of giving them the wrong keys?

A. Yes, sir.

Q. Now, Jerry, about what time did they bring you downstairs, if you know? How long was it after they came in?

2006 A. I would suppose may be a quarter or half after 9 they brought me downstairs.

Q. Did they keep guard over you all the time?

A. All the time.

Q. Did you see any reporter come in and try to go to the telephone?

A. No, I don't recollect noticing him.

Q. I will ask you to state whether or not you were much excited.

A. I was.

Q. And frightened?

A. Yes, I was frightened.

Q. Had they threatened you with violence?

A. They said if I didn't produce them keys and open that door that they would—I think they threatened to shoot me.

Q. You think they threatened to shoot you?

A. Yes.

Q. State whether or not you ever did produce the keys until they took them from you.

A. Never. I kept the keys secured in one place.

Q. State whether or not you were able to get anywhere to give an alarm.

A. No.

Q. Was there any way of communicating from that hospital cell to the outside wall—that cell where they caught you?

2007 A. No, sir. I will explain how that was. I could, if they hadn't kept guard over me. I could have went down to the office, but they guarded me.

Q. They would not let you go?

A. No, sir.

Q. You say that Ellen Baker was locked in her cell?

A. Yes.

Q. Did she ever come downstairs that night at all, after you got there?

A. No, sir.

Q. She was locked in her cell when you got there?

A. She was.

Q. You found her locked in her cell?

A. Yes.

Q. And she remained locked in her cell?

A. Yes.

Q. Did you make any such remark to her as to tell her to go back upstairs, that there was going to be a mob come there?

A. No; she was not downstairs.

Q. Did you talk to her, anything about any mob, and tell her anything about any mob?

A. I was standing just right opposite her cell. I think I had just locked the door after putting the water in, and I might have said, and probably did say right then and there, "I believe that is a mob."

Q. Oh, that was when they hit to door?

A. Yes; never before that.

2008 Q. Did she talk to you, anything about a man who had been put in jail there for murder, and who had formerly been in the other hospital cell, about getting in to write letters for her?

A. I had no conversation with her that night; just only what I was doing when I handed the water; but I didn't, to say, have a conversation with her.

Q. You say, when you heard them hit the door, you may have said "That is a mob?"

A. Yes; I think probably I did. Anybody could tell it was a mob that heard them strike the door and come in. That was just as they struck the door.

Q. And you heard a man say, "We are going to get that damn nigger?"

Mr. SANFORD. I object to leading questions.

Mr. COOKE. I am not leading him, because he stated that.

Q. (By Mr. COOKE.) Now, Jerry, I will ask you to state whether or not you were a member of the federal grand jury here along about that time—the grand jury out here in this custom-house.

A. I was on the grand jury; yes.

Q. You were on the grand jury?

A. Yes.

Q. State whether or not the grand jury that you were on indicted Ellen Baker for selling whiskey?

2009 A. Let me see. I was either on the jury that found a true bill against her, or I don't know but what it was a jury that convicted her.

Q. You were on either one of the two?

A. Yes. I believe I was on the jury that convicted her.

Cross-examination by Mr. SANFORD:

Q. How old are you?

A. 62.

Q. You are not very strong physically, are you?

A. Well, I consider myself pretty stout for a man of my age.

Mr. COOKE. Will you allow me to ask another question?

Mr. SANFORD. Certainly.

By Mr. COOKE:

Q. Are you a deputy sheriff at the present time?

A. No.

Q. When did you cease to be a deputy sheriff?

A. About the first of last September.

Q. Did you enter into any conspiracy with anybody to mob Ed. Johnson?

A. No.

Q. Or assist or aid, abet, or encourage anybody else to mob him?

A. No.

2010 By Mr. SANFORD:

Q. You are a defendant in this case, though?

A. Yes.

Q. But not a deputy sheriff. Have you ever talked over what happened that night with your boy, Houston?

Mr. COOKE. I forgot to ask him a question about that boy's testimony, if you will permit me again.

Mr. SANFORD. Well, go ahead.

By Mr. COOKE:

Q. Jerry, state what you told Captain Clift, when you brought that boy down to see him.

Mr. SANFORD. I object to that, and you do not insist on it, I take it. You need not wait for that, Mr. Gibson. Just go on and answer my question.

By Mr. SANFORD:

Q. Have you ever talked that over with your boy?

A. I asked him this——

Q. I just asked you the question, have you ever talked it over with him?

A. Yes; some.

Q. How many times?

A. Why, just one time.

Q. When was that?

A. That was just before I brought him to the lawyer.

Q. How long ago was that?

A. About a month, I guess.

2011 Q. About a month ago?

A. Yes.

Q. You had never talked to him up to that time?

A. I don't think I had.

Q. You do not think you had?

A. No, sir.

Q. How often do you see him?

A. I see him all the time, at home.

Q. From the time you were a defendant down to one month ago, you never talked to your boy about what took place that night. Is that your testimony?

A. I don't recollect it, if I did. I would have done it freely, but I don't recollect it because I didn't recollect the circumstance about his being there at first, and then it was talked at home that he was with me that night.

Q. Who talked it at home?

A. His mother and me.

Q. Then you have all talked it over there among yourselves, I take it?

A. We have some, yes.

Q. You live at Highland Park?

A. Yes.

Q. You say those chains on the circle door were what you call log chains?

A. Yes, I called them log chains.

Q. How many sets of them were there?

2012 A. There are just one iron chain for each door. They look more like a cable chain on a steamboat. You have seen them, haven't you, with a short link?

Q. How long were the chains?

A. Oh, the chains—oh, I don't know; may be the chains we had up there must have been 15 or 20 feet.

Q. And there was one chain for each door, you say?

A. Yes, when they are chained.

Q. And how many altogether?

A. Well, we never did have them all chained at one time; but the circle door is on the second floor, third floor, and fourth floor. The lower floor, down below, was where the women stays.

Q. The second, third, and fourth floors have circle doors?

A. Yes.

Q. Did each of those have a chain regularly, formerly?

A. Not regularly.

Q. Were there chains there for them if you wanted to put them on?

A. I think so, yes.

Q. Was there more than one chain to each door, or just one chain to each door?

A. One chain to each door. I think we had chains for each door. I never paid very much attention, because I never did have them all chained at one time.

Q. But you know how many chains there were?

2013 A. They laid in the scrap pile.

Q. You were night jailer there?

A. Yes.

Q. How long had you been there?

A. 18 months.

Q. You certainly know how many chains there are?

A. I recollect the two chains.

Q. You had had them on those doors; you recollect that?

A. I have had them on.

Q. You have had them on?

A. Yes.

Q. What did you have them on for?

A. It was considered to make the door more safe.

Q. And it did make them more safe?

A. Yes, sir.

Q. It made them a good deal more safe, did it not?

A. Yes, sir.

Q. And when that trial was going on, and you had Ed. Johnson guarded there at night, and all those extra guards there and deputies, you had those chains on, did you not—on the circle door on his floor all the time?

A. I think we did.

Q. Yes, I thought so. But you did not have one on his floor that night?

A. No, sir.

Q. Those chains would have to be broken or cut in some way
2014 before a man could get in through those circle doors?

A. Yes; or break the lock off.

Q. Break them on some way?

A. Yes, sir.

Q. How would you twist those chains around the circle doors? Did you weave them in and out through the doors and side?

A. Yes. There was diamond holes left between the bars big enough to put the chains through.

Q. There were places left between the bars big enough for the chains to go through?

A. Yes.

Q. And you would leave the lock on the inside so that the prisoner on the inside, whose cell was left open, could come and unlock it. Is that the idea?

A. Yes. I would let him lock them, and then when I got ready to take the prisoner out I would have to turn a crank and let him out of his cell, and then give him the key so he could unlock it.

Q. The lock was on the inside?

A. Yes, sir.

Q. So the thing that was exposed on the outside was this chain? That would be exposed?

A. Yes, sir.

Q. And anybody whacking at it on the outside to break it could not get at the lock, but could only get at the chain on the outside?

A. Not unless he pulled the circle around.

2015 Q. He could not do that, because it was locked.

A. Yes.

Q. He would have to break this log chain there that you speak of?

A. Yes.

Q. What time of night did you get there?

A. I think I got to the jail about 6.15 or 6.20.

Q. Are you not a rather feeble man? Do you call yourself an able-bodied man?

A. Yes; I call myself an able-bodied man.

Q. You do?

A. Yes, sir.

Q. You do not consider yourself feeble?

A. No, sir; I do not.

Q. You got there about what time?

A. I think about 6.15 or 6.20. I am not just positive as to the minute, but it was after 6 o'clock.

Q. Did you not have a conversation with Captain Brown when you got there?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you not have a conversation with Captain Brown before he left that night?

A. No; I did not. He went right on to the car when he handed me the keys.

Q. Did not Captain Brown state to you that they were expecting a mob that night?

2016 A. He did not.

Q. He did not?

A. No, sir.

Q. Have you not stated that Captain Brown stated to you that he was expecting a mob that night?

A. No; I think I know what I stated about that. Do you want me to repeat it?

Q. No; I asked if you stated that fact. Have you stated that?

A. No.

Q. You got there about half past 6, and you were upstairs, you say, when you heard the noise downstairs?

A. Yes.

Q. How long had there been in between those times?

A. You mean——

Q. I mean between the time you got there and the tome you first heard this noise downstairs.

A. I think the mob came—do you want me to answer it that way?

Q. That is what I asked you.

A. I think they came about 8.30 or about 9 o'clock.

Q. How long after you first got there?

A. Well, two hours and over.

Q. How do you fix the time when they first got there?

A. I fix the time by knowing that I go around and turn the lights out at 9 o'clock, and they came when I was inside of the jail. I had not turned the lights out.

Q. They came before you turned the lights out?

2017 A. Yes, sir.

Q. And you were up on the fourth floor?

A. Yes, sir.

Q. On Ed. Johnson's floor?

A. Yes, sir.

Q. And you were inside of the jail part of the jail as separated from the office?

A. Yes, sir; the stairways—I don't that it is necessary to ex-explain that to you.

Q. What about it?

A. The stairways are all on the inside of that hall.

Q. The stairways come from one floor to the other?

A. Yes, sir.

Q. From the inside of the jail can you go on out to the front of the jail on that floor?

A. You have to unlock the door, you know, to get out.

Q. Which door?

A. The door that leads into this hallway—the main entrance.

Q. That is from the office?
A. Yes.
Q. Can you get out any other way?
A. No—well, yes; there is a door down at the back side that could be unlocked.
Q. That is inside of the jail part?
A. Yes.
Q. Where does that lead to?
A. That leads out to the kitchen, as we call it.
2018 Q. Then what is outside of the kitchen?
A. There is nothing but just a lot.
Q. And that leads out into the neighborhood?
A. Yes, sir.
Q. There were houses all around there, were there?
A. There is no house on the jail lot.
Q. But there are houses all around in that immediate neighborhood?
A. Yes.
Q. You knew when you heard that noise downstairs that they had come for Ed. Johnson, did you not?
A. I thought so.
Q. You did not have any doubt about it?
A. They said so, and I thought they meant it.
Q. You did not make any effort to get out that back door and go and arouse the neighborhood, did you?
A. I didn't go downstairs. I would have had to pass the door where they was at.
Q. You had a pistol?
A. Yes.
Q. And you made no effort to get out and to go out the back way at all?
A. No.
Q. How long did they hammer there, at what I call the front door? I mean by that the door between the jail and the office. How long did they hammer there before they got in?
A. A very short time.
2019 Q. What do you mean by a very short time?
A. I would say not ten minutes.
Q. What were you doing all that time?
A. I was upstairs looking for relief some way.
Q. How did you expect relief? Did you give a warning to anybody?
A. I couldn't get to them to give a warning.
Q. Did you make any effort to get out?
A. No, sir.
Q. You just stayed upstairs?
A. I would have had to pass the mob to went down and get to this door.

Q. You did not want to pass the mob? You were an able-bodied man and had a pistol, and it was your sworn duty to protect those prisoners?

A. Yes, sir.

Q. That is what you were there for?

A. Yes.

Q. And you had a passageway out back where you could get out and give a warning?

A. The mob would have killed me if I passed there, in my estimation.

Q. You mean that you got scared and did not try it?

A. I didn't go back down there.

Q. You did not take any chances. You just stayed upstairs?

A. Yes, sir.

A. Did you get in bed?

2020 A. No, sir.

Q. You did not go to bed?

A. No, sir.

Q. Did you take your pistol out? Did you pull your pistol? Did you go down there and try to pull your pistol on them, or do anything?

A. I didn't go down there.

Q. Did you pull your pistol?

A. No.

Q. Or make any effort to get out?

A. No.

Q. You just stayed there and waited?

A. Yes.

Q. In your sworn capacity to defend that prisoner, that is what you did?

A. Yes.

Q. It took them about ten minutes to get up to where you were. Did you do anything then to try to stop that mob? Did you pull your pistol, and threaten anybody with it?

A. Three men came and grabbed me and took the keys, and all I had, out of my pockets.

Q. You said a little while ago that it took ten minutes, or five minutes, for them to get your keys. What were you doing? Were you fighting? Were you using your strength? Did you pull your pistol?

A. No.

Q. You did not do a thing, did you; you just gave up?

2021 (A pause.) You just gave up?

A. I just stayed right there until they came and captured me.

Q. You just gave up; that is so, is it not?

A. Yes, sir.

Q. And you let them have your keys?

A. Yes.

Q. And you an able-bodied man?
A. Yes.
Q. You let them have your pistol. You did not hurt anybody?
A. No, sir.
Q. You did not make a scratch on any living man that came there?
A. I don't think I did.
Q. How long were they there after you let them have what you did, the keys, the pistol, &c.? How long were they there?
A. I suppose they were there an hour.
Q. Who were those three men that had you?
A. I didn't know them.
Q. You did not know them. You saw Dr. Sutton there, did you not?
A. I don't know Dr. Sutton now.
Q. Did you see the men that went in with them when they went in to get Ed. Johnson?
A. I seen that there was a crowd rushed in. Yes, I was standing in the corner and seen them.
2022 Q. You did not know Dr. Sutton?
A. No, sir.
Q. You do not know whether he was there or not?
A. No, I don't know him.
Q. How many men were there in the crowd besides these three men that were around there talking to you that night?
A. I suppose there was 25 men came up the steps.
Q. 25 men inside the jail?
A. Yes, sir.
Q. How many did you talk to?
A. I talked to these three. They kept me, and they was the ones that kept me in one corner. The others didn't come to talk to me.
Q. The others did not come and talk to you?
A. No.
Q. Did they have their pistols out all the time?
A. Why, one of them had, or more all the time.
Q. Did you make any effort to break away?
A. No.
Q. Or use your strength in any way?
A. No.
Q. Were you tied?
A. No.
Q. What kind of a pistol did you have—a repeater?
A. Yes, sir.
Q. How many loads did it have in it?
A. Five, I think.
2023 Q. You were on top of the steps, and could see them coming up. You could have shot the first three men, with a repeater, if you had tried, could you not?
A. Well, I might have done so.

Q. You had seven loads?
A. No; five.
Q. Five loads. Did you have a gun upstairs?
A. No, sir.
Q. How far away were these other men from you, the rest of the 25 that were inside?
A. I suppose about 20 feet.
Q. Did you talk to any of them?
A. No conversation, only in regard to the lock.
Q. Who did you talk to?
A. I didn't know the man that I talked to.
Q. Who did you know that was there that night? Who did you see that you recognized?
A. Well, I thought I knowed Nolan. The man that I thought was Nolan had a mask over his face.
Q. That was Nick Nolan, that you thought was Nolan, the defendant in this case, I mean?
A. I don't know whether it was him or his brother. It looked very much like him.
Q. You thought it was Nick Nolan that night?
A. Yes, I did.
Q. How long had you known Nick Nolan?
A. Well, I had known him a year or two.
Q. In what way had you known him?
2024 A. Well, I had seen him out here at his place of business.
Q. Have you frequented his place of business?
A. I have been there several times.
Q. He has waited on you, and you have talked to him at his bar?
A. Yes.
Q. And you were well acquainted with Nick Nolan?
A. Not at that time, so well.
Q. You were well enough acquainted with him to recognize him, as you thought?
A. I thought at that time it was Nick Nolan.
Q. How was that mask; just a little handkerchief over his eyes?
A. He had some kind of mask, a cloth or something; a flour sack or something.
Q. A handkerchief just tied over the top of the eyes, or over the top of his head, and over the eyes?
A. It covered the face up.
Q. It did not cover the lower part of the face, did it?
A. I didn't pay so much attention to that as to notice all of it.
Q. Of course you could not have recognized him if his face had been all covered over. His face was not all covered? There was enough of it out for you to recognize him, as you thought?
A. I thought it was him then.
2025 Q. There was enough of his face uncovered for you to recognize him. That is so, is it not?
A. No: not so much that way.

Q. How did you recognize him?
A. It was more by the size of the man.
Q. And what else?
A. And his face was not visible to me. More by the size of the man, I took it to be him.
Q. You talked with him?
A. No; I don't think I did.
Q. You heard him talk?
A. Yes, I heard conversation going on.
Q. You heard his voice?
A. Different ones of them.
Q. You heard him called Nick by the others, did you not? You heard him called by his name, did you not? You were right there?
A. I don't recollect it if I did.
Q. You do not recollect it?
A. No.
Q. Put your mind on it, and see what you recollect about that. Was not that one of the things that helped you to tell that it was Nick Nolan, by hearing the others calling him by name?
A. I think maybe there was somebody called him Nick. They called one man in there Nick.
Q. That is your recollection about it?
A. Yes.
2026 Q. That is the man you thought was Nick Nolan, and that helped you to recognize him, did it not?
A. That is the way I drawed that idea.
Q. It attracted your attention, and you drew that idea, and by his shape and appearance you thought you recognized him? That is so?
A. I thought that; yes, sir.
Q. What was this man doing whom you thought you recognized as Nick Nolan?
A. He was just running around with the crowd; just mingling. They were all mixing up, and I couldn't tell what they was doing.
Q. What particular thing was this man doing?
A. I don't recollect seeing him doing anything, any particular thing.
Q. You do not recollect seeing him doing any particular thing except having this mask on?
A. No, sir.
Q. Did he have a gun?
A. I did not see it.
Q. Was he one of the three men who were guarding you?
A. No, sir.
Q. What did the three men who were guarding you call each other?
A. I never heard them call any names.
Q. You heard other names in there that evening besides Nick Nolan's? Nick Nolan was not the only man you heard called by name?

2027 A. I don't recollect of anyone else.

Q. What other men did you recognize there? You recognized several of these defendants, did you not? I do not mean of the defendants, but I mean of the men there. You recognized several of those men, or thought you did, did you not?

A. The mobbers came in, and then they kept coming in, you know—newspaper reporters, and different ones.

Q. Yes, you recognized them?

A. I recollect one.

Q. Who do you recollect?

A. Mr. Chivington.

Q. You saw Mr. Chivington there?

A. I saw him.

Q. Who else do you recollect? You recognized other men besides Mr. Chivington? You recognized several of those mobbers, did you not, and have so stated, have you not?

A. No.

Q. Who are those other men you recognized?

A. I did not recognize the others.

Q. You did not recognize anybody else?

A. I don't think I did.

Q. You thought at the time that you recognized other men besides Nick Nolan, did you not?

A. I don't think I did.

Q. Think about that. Did you not hear other men called by
2028 their names? Were they not calling each other by name? They were pretty bold, were they not?

A. Yes.

Q. And did not make much concealment? They thought they were having things pretty much their own way?

A. Yes.

Q. And they called each other by name, and were not very particular whether those handkerchiefs or things stayed over their faces or not? That is true?

A. There was men there that was not masked at all. The men that was masked seemed to keep the masks over their faces.

Q. You were there an hour?

A. About an hour.

Q. Who were the men you recognized that were not masked?

A. I don't recollect anybody.

Q. You did recognize others at the time, did you not?

A. I don't think I did.

Q. You do not think you did?

A. No.

Q. You recognized some of those other men that were masked at that time, by hearing their names called, and by their appearance?

A. No.

Q. Did you not recognize two or three others of those men besides Nick Nolan?

A. No, sir; I did not.

2029 Q. Did you not recognize Bart Justice?

A. I never knew Bart Justice until I seen him in the court room here.

Q. Then, you did not recognize him. You never knew him before?

A. No.

Q. When the lynchers went away where did you go?

A. I stayed there and attended to the jail, and fixed up things.

Q. You protected it. Did you have a pistol, or did they take it away with them?

A. I found the pistol laying upstairs on the bunk with the cartridges out of it.

Q. Did you load it again?

A. Yes; when I went downstairs, I did.

Q. Who did you see when you got downstairs?

A. Oh, I don't know. People were coming in and going out.

Q. Did you see Matt Galloway down there?

A. I don't recollect seeing him.

Q. Did you see Matt Galloway anywhere that night?

A. I think he came to the jail sometime that night.

Q. Was he in the crowd that came up there, the first crowd?

A. No.

Q. He was not?

A. No. Oh, you mean——

Q. I mean in the mob.

2030 A. You mean in the last mob.

Q. Yes.

A. No. If he was, I did not see him. I was in a position where I couldn't see him. I was upstairs, and this here crowd came in from downstairs.

Q. You were in a position where you could not see him?

A. Yes.

Q. But you saw him there after the lynchers had gone away—after this handfull of men had taken Ed. Johnson away—you remember when they took him away?

A. Yes.

Q. Did you follow them out?

A. No.

Q. Did you shoot after them?

A. No.

Q. Did you go out on the street and try to raise a posse and stop them?

A. No, sir.

Q. You did not do anything like that?

A. No.

Q. There were some rifles downstairs in the front office?

A. Yes.

Q. Springfield rifles?

A. Yes.

Q. Did you try to get any of those, or try to fire after anybody?

2031 A. No.

Q. Did you hurt anybody that night?

A. No, sir.

Q. When you got down there you saw Matt Galloway downstairs, after the thing was over?

A. I don't recollect seeing him.

Q. You do not recollect seeing Matt Galloway?

A. No, sir.

Q. You say you did not start after the lynchers or try to raise an alarm at all?

A. No, sir.

Q. Did you see Fred Frawley down there?

A. I don't recollect him.

Q. You do not recollect seeing Fred Frawley. Did you see Charlie Baker?

A. I don't recollect about it.

Q. Did you see Perkins, the deputy sheriff?

A. I don't recollect seeing any. I know I did not see them at the time the lynchers went out, but whether they came later that night or not, I don't recollect.

Q. Did you see any one of those men down there? Did you see Deputy Sheriff Jones?

A. I don't recollect seeing them there.

Q. You do not recollect seeing a single deputy there that night?

A. I don't recollect it.

Q. You do not recollect it?

2032 A. No, sir.

Q. Did you see Sheriff Shipp downstairs there after you came down; down in the office there after the lynchers had gone?

A. I don't recollect seeing him down there after they left. I recollect seeing him in there when they was in.

Q. Do you recollect seeing him downstairs after they left at all?

A. I don't recollect seeing him.

Q. How long did you stay downstairs after they left?

A. I stayed there all night.

Q. I mean, how long did you stay down in the office?

A. I don't recollect.

Q. You do not recollect seeing Sheriff Shipp in the office after the lynchers had gone?

A. I don't recollect seeing him.

Q. You do not recollect seeing him?

Q. The only place I recollect seeing him was in the lobby.

Q. In where?

A. Where the mob came into.

Q. In the lobby?

A. Well, inside of the stairway.

Q. Inside of the stairway. Can you not recollect anybody else that you recognized there that night except Nick Nolan?

2033 A. No; and I don't just recollect him, except in the way I have explained to you.

Q. You have already stated about that. Did you not recognize other people there in the same way?

A. I did not; not that I recollect of.

Q. Did you know Luther Williams?

A. No, I don't know Luther Williams.

Q. You do not know him. Did you know Frank Ward at that time?

A. Not at that time.

Q. Did you know Henry Padgett at that time?

A. No.

Q. Did you know William Mays at that time?

A. No; I don't know him yet.

Q. Of course it would not make any difference whether you knew him now or not. Sheriff Shipp had two sons that were deputies, did he not, at that time—Joe and another?

A. Yes; he had sons that done deputy work.

Q. What was the other son's name?

A. Joe and John, I believe.

Q. Did you see either of them there that night?

A. No.

Q. At any time?

A. No.

Q. How about the street door of the building? Do you keep that locked all night or is it open?

A. We generally just keep that so we could turn the knob and go in.

Q. You never kept it locked as a rule?

2034 A. Not as a rule; no.

Q. You do not know whether it was that evening, do you?

A. No, sir. I do not know.

Mr. SANFORD. I may desire to recall this witness for further cross-examination, but I am through for the present.

Redirect examination by Mr. COOKE:

Q. You were asked whether or not you made any show of resistance to this mob. State whether or not you saw that you were overpowered, and that resistance was useless.

Mr. SANFORD. I object to the question as leading.

Mr. COOKE. I said "whether or not."

The WITNESS. Yes; I was overpowered, in my estimation.

Q. (By Mr. COOKE.) I will ask you this, then: What is the reason you did not make any show of resistance?

A. From the amount of noise and the guns they was using I thought that I would be killed instantly if I had done it.

Recross-examination by Mr. SANFORD:

Q. You say you were overpowered before you went down-
2035 stairs at all? Did you not say that? You were scared to go down. That is the fact about it, is it not? Before you saw what guns they had or anything about it you were just scared to go down?

A. I was just looking for relief to come.

Q. You were just scared to go down. That is the fact, is it not? That is the fact, is it not?

A. No; I wasn't scared to go down.

Q. You were not scared to go down?

A. I was expecting relief to come from the outside.

Q. And you were not scared to go down. What relief were you expecting from the outside?

A. I thought the deputies or the police or somebody would come.

Q. You expected they would come?

A. Yes.

Q. And you just stayed upstairs expecting somebody would come?

A. Yes.

Q. You generally had deputies around there at night, had you not?

A. Well, occasionally they would be there.

Q. Generally, I say?

A. Yes; generally there would be somebody around.

Q. And you expected some of them were there that night, did you not, and that they would come to help you?

A. I expected relief to come.

2036 Q. You did not think they would all leave you before ten o'clock at night, but you thought they would come and help you. You thought you would stay upstairs, and pretty soon you would get relief from some of the deputies?

A. Yes; I thought so.

Redirect examination by Mr. COOKE:

Q. Where were you when the first mob attacked the jail?

A. I was on the inside of the jail.

Q. Were you locked up, just as you were this time?

A. Yes.

Q. Did relief come to you and relieve you that first time?

A. Yes.

Recross-examination by Mr. SANFORD:

Q. You had just as many deputies there that time, did you not?

A. Considerable.

Q. The same men were not there the last night, were they?

A. No.

Q. And there was a heap bigger crowd the first time, and you stopped it?

2037 A. I wouldn't know——

Q. That is the fact?

A. I expect the crowd was larger the first time.
Q. You expect the crowd was larger the first time?
A. Yes.

Redirect examination by Mr. COOKE:

Q. You were asked if there were not several deputies there the first time. I will ask you if there were not only three deputies there the first time, and the three of the deputies who are defendants in this case?
A. George Brown was there and Matt Galloway was there, but I don't recollect what other deputy was there.
Q. Do you remember whether or not it was Fred Frawley?
A. Yes, Fred Frawley was there.
Q. And that is all there were there at the time of the first mob, was it not?
A. That is all I recollect of.

Mr. SHEPHERD. This witness has implicated one of my clients, Mr. Nolan, and I desire to cross-examine him, but I am not ready to do so now, and I will ask an adjournment until to-morrow morning at 9 o'clock.

Mr. SANFORD. You do not want an adjournment of the whole case, but only so far as he is concerned?

Mr. SHEPHERD. Yes.

Mr. SANFORD. That is all right.

Mr. HOOD. I have one other witness here on behalf of
2038 Frank Ward, whom I would like to examine.

WALTER D. SPRADLEY, a witness produced on behalf of the defendant Frank Ward, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. HOOD:

Q. What are your initials?
A. W. D.
Q. Where do you live?
A. 524½ East Ninth street just now.
Q. In Chattanooga?
A. Yes, sir.
Q. What business are you in?
A. The restaurant business.
Q. Where is your restaurant?
A. 1061 Market street. I am working now at 505 Market street.
Q. Where are you now?
A. At 505 Market street.
Q. Do you remember the lynching of Ed. Johnson?
A. Yes, sir.
Q. On March 19, 1906?
A. Yes, sir.
Q. Where were you?
A. Where did I work at that time?

2039 Q. Yes.
A. 1061 Market street.
Q. How far was that from W. P. Barnes' saloon?
A. Two doors.
Q. Where were you the night of the lynching?
A. In the restaurant.
Q. You were working in the restaurant that night?
A. Yes, sir.
Q. How long did you work in the restaurant that night?
A. Until half-past 10.
Q. What were your regular hours at the restaurant?
A. From 6 to 7.
Q. Day or night?
A. Day.
Q. From 6 in the morning until 7 in the evening were your regular hours, and you were working that night?
A. Yes, sir.
Q. Did you see Mr. Frank Ward, the defendant, that night?
A. Yes, sir.
Q. When and where?
A. In the restaurant.
Q. About what time did you see him?
A. I saw him first about half-past six.
Q. Were you with him at that time?
A. Yes, sir.
2040 Q. State if you went with Mr. Ward to any place about that time.
A. Yes, sir. I went to Mr. Barnes' with him about 7 o'clock.
Q. About 7 o'clock?
A. Yes, sir.
Q. About what time did you see him after that?
A. I seen him between 7 and 8, again.
Q. When did you see him after that, then?
A. I seen him between 8 and 9.
Q. How many times did you see him that night?
A. Five or six. I couldn't say positively; 5 times at least.
Q. When was the last time you saw him?
A Between half-past nine and 10 o'clock.
Q. Where was he at that hour?
A. In the restaurant.
Q. How far was that from where he lived?
A. Two doors.
Q. I will ask you to state what his condition was that night?
A. He was pretty full.
Q. You mean by that that he was under the influence of liquor?
A. Yes, sir.
Q. I will ask you how you fix that in your mind as being the night of the lynching?

A. It had been the first night I had worked at night, except Saturday nights, for Mr. Deitch.

Q. And that was Monday night?

2041 A. Yes, sir.

Q. You were working for Mr. Deitch.

A. Yes, sir.

Q. And your regular hours were in the daytime?

A. Yes, sir; from 6 to 7.

Q. That was the only Monday night you had ever worked for him?

A. Yes, sir.

Q. When was the first time you heard of the lynching of Ed. Johnson?

A. The next morning.

Q. About what time was that?

A. I opened up at 6 o'clock.

Q. You opened up the restaurant?

A. Yes, and as soon as I opened up I picked up the Times that we had delivered there. I always looked at the paper in the morning after I got my fire started.

Q. Do you remember how long it was after the lynching that you heard Mr. Ward was accused of being implicated in it?

A. Something over a month.

Q. I will ask you to state whether or not you told Mr. Ward what you knew——

Mr. SANFORD. I object to that, as it is entirely incompetent and hearsay.

Q. (By Mr. COOKE.) I will ask you to state whether or not you made an affidavit later of what you knew about it?

2042 A. Yes.

Mr. SANFORD. I object to that as equally incompetent and hearsay.

The WITNESS. Yes, sir; I made an affidavit.

Q. (By Mr. COOKE.) I will ask you to state if your affidavit was not filed as a part of Mr. Ward's answer in this case?

A. As what?

Q. As a part of his answer to the charge?

A. Yes, sir.

Mr. SANFORD. I object to that.

Cross-examination by Mr. SANFORD:

Q. How far is that restaurant of yours—or Mr. Deitch's restaurant; is it?

A. Yes, sir.

Q. How long have you been with Mr. Deitch?

A. I went to work for him November 7th, 1905.

Q. What are his initials?

A. Max Deitch.

Q. Is he still there?

A. No, sir; he is down at 1305 Market street now.

Q. Was there any bar connected with his restaurant?
A. Not at that time; no, sir.
Q. But there had been; had there?
A. There had been a side door leading from the saloon into
2043 the restaurant. It had been a pool room previous to the restaurant's opening up there; in the rear.
Q. Does he run it?
A. No, sir; Johnson was the man Mr. Deitch leased of.
Q. Did Mr. Deitch ever run a bar room?
A. No, sir.
Q. Did you ever work any place except in a restaurant?
A. I worked at bill posting.
Q. What business have you been in besides that?
A. I have worked at bill posting in several places.
Q. Did you ever work at any business besides that and the restaurant business?
A. No.
2044 Q. How long have you been knowing Mr. Ward?
A. Ever since I have been in Chattanooga, October a year ago.
Q. A year ago last October. He got drunk pretty often, did he not?
A. Yes, sir.
Q. There was nothing unusual to attract your attention in Mr. Ward being drunk, was there?
A. No, sir.
Q. Were you in the saloon drinking with him that night?
A. I went in with him about seven o'clock.
Q. Did you have a drink with him?
A. Only one.
Q. Did you have any more that night?
A. No, sir.
Q. At any other place besides that?
A. No, sir.
Q. How do you happen to fix upon the time you saw Ward that night? Did you keep a record of it, or how did you happen to get the accurate hours about it?
A. I couldn't say accurate hours. The first time, as I said, he was in between 7 and 8, and between 8 and 9, and the next was between half past 9 and 10. I went to the saloon next door to Mr. Deitch's place to get a pint of whiskey, and Mr. Ward was sitting in the restaurant then. He was drunk, and he wanted more chili. He used
to have a chili and a hamburger, and such as that now
2045 and then.
Q. You went over to get a pint of whiskey?
A. Half a pint.
Q. And he was sitting in your place when you went out?
A. Yes, sir.

Q. That saloon was next to the saloon that Ward lived over, was it?

A. Yes, sir.

Q. He lived over one saloon and had another saloon next door, did he?

A. Yes, sir.

Q. Which saloon was on the corner?

A. Barnes'.

Q. And this other saloon was next to it, and then your restaurant?

A. Yes, Mr. Deitch's restaurant.

Q. Where are the street lights?

A. Well, there is a railway crossing right there with a couple of electric lights.

Q. Where are they? On which side of the saloon that Ward lived over?

A. There is one on each side of the street.

Q. One on each side of the street?

A. Yes, sir.

Q. How far from the saloon?

A. I should say possibly——

Q. Are the lights out in the center of the crossing of the street?

A. I couldn't say positively whether they are in the
2046 center. There is one on each side of the railway crossing, which runs right alongside of Barnes' saloon.

Q. It runs alongside of the saloon?

A. It crosses the street; yes, sir.

Q. What railroad is that?

A. The railroad to Atlanta.

Q. What is the name of it?

A. The W. & A., or something like that.

Q. It runs by the side of his saloon, and how far from it?

A. About ten feet.

Q. And crosses the street?

A. Yes, sir.

Q. Where are the lights of that railroad crossing?

A. There is one on one side and one on the other. I couldn't say how far.

Q. When you say one on one side and one on the other, what do you mean?

A. On each side of the street.

Q. In the middle of the railway crossing or on each side?

A. No, sir; on each side.

Q. Take the one that is closest to the saloon; how close is it to the saloon?

A. I should say it was not over 100 feet.

Q. Not over 100 feet from the saloon?

A. Yes.

Q. In which direction from the saloon?

2047 A. Right opposite.

Q. How far away is the other one?
A. The other one, I should say—well, that is hard for a man to judge.
Q. It is some 50 or 100 feet further off?
A. I suppose it is.
Q. And still further away?
A. Yes, sir.
Q. Your restaurant is in the other direction, as I understand?
A. What?
Q. I say your restaurant is in the other direction, as I understand, from these lights?
A. Yes, sir; on this side.
Q. In the other direction?
A. Yes, sir.
Q. And it is the second house from Barnes' saloon?
A. Yes, sir.
Q. How many saloons are there in that neighborhood?
A. Quite a number. There are four in that block now.
Q. Is your restaurant a white or a mixed restaurant?
A. It is white.
Q. White entirely?
A. Yes, sir.
Q. Is there any intervening house between your restaurant and this other man's saloon, the second saloon you spoke of?
2048 A. No, sir; they all connect.
Q. The two saloons and Deitch's restaurant are all adjoining one another?
A. Yes.
Q. And on the same side of the street?
A. Yes, sir.
Q. Do you remember how you happened to work there on that particular night?
A. Yes; Mr. Deitch wanted to get off for something. I couldn't say what it was. It was the first time he had got off since I went to work for him on that particular night, Monday night.
Q. Was he there that night?
A. He came back; yes, sir.
Q. About what time?
A. About 10 o'clock or a little after.
Q. He was not there before that time?
A. I think may be he did come in there once.
Q. When did he come in?
A. I couldn't say exactly what hour.
Q. He was off that night and you were running it?
A. Yes, sir; he wanted to go some place, and I stayed for him that night.
Q. And that is the way you happened to be there that night?
A. Yes, sir.

By Mr. HOOD:

2049 Q. I wanted to ask you, Mr. Spradley, if Mr. Deitch did not get you to work that night because he wanted to go to his wife—that he had a sick wife?

A. He had me to go on for something, I disremember what it was.

Mr. HOOD. That is all I have for the present.

Thereupon, at 4.20 o'clock p. m., the hearing was adjourned until Thursday June 27, 1907, at 9 o'clock a. m.

2050 CHATTANOOGA, TENNESSEE, *June 27, 1907.*

The hearing was resumed at 9 o'clock a. m.

Present: James D. Maher, esq., the commissioner; Messrs. Sanford and Penland; and counsel for the various defendants.

JERRY GIBSON resumed the stand for redirect examination.

By Mr. SHEPHERD:

Q. Did we understand you, in your examination yesterday afternoon, to say that you recognized the defendant Nick Nolan as one of the parties that were in the mob that broke into the jail?

A. No; I didn't mean to say positively that I recognized him.

Q. You have seen the defendant Nick Nolan this morning. This is he sitting over here [indicating]?

A. Yes.

Q. State whether or not he is the man that you thought you recognized at the jail on the occasion of the lynching of Johnson?

A. The man that I thought was Nolan was a smaller man,
2051 apparently. If he could stand up I could tell more about it.

Mr. SHEPHERD. Stand up, Mr. Nolan.

(The defendant, Nick Nolan, stood up as requested.)

The WITNESS. He was a lower man, it seemed to me.

By Mr. SHEPHERD:

Q. What is your best judgment now as to whether or not the man that you think you recognized at the jail and this man Nick Nolan are the same?

A. Well, the man I recognized, and according to my judgment I thought was Nolan, was a smaller man than this one.

Q. The man that you referred to yesterday, as thinking that you saw him at the jail, had a handkerchief tied across his face, did he not?

A. Yes, some kind of a cloth; I didn't know what it was.

Q. The top of the mask, whatever it was, was across his nose and face just below his eyes, was it not?

A. Yes, sir.

Q. So that there was no part of his face visible except the eyes and the forehead; that is right, is it?

A. Yes.

Q. And the man had a hat on?

A. I don't know whether he had a hat or a cap.

Q. How was it possible, Mr. Gibson, for you to recognize a man who had all of his face covered except the eyes and forehead?

A. Well, I didn't consider that I did positively recognize him. I so state now.

2052 Q. And you wish to be understood as stating now that you did not recognize the man that you said yesterday you thought was Nick Nolan?

A. No; I don't recognize him as the man.

Q. You were very much excited, as you stated yesterday?

A. Yes, sir.

Q. And three men had you cornered off in the hospital cell most of the time that the mob was in the jail?

A. Yes.

Q. State whether or not, if it had not been that someone in that party used the name "Nick," you would have supposed that it was Nick Nolan.

A. That was the name that made me incline to think so.

Q. I will ask you to state whether he used the Christian name "Nick" or "Nick Nolan?" Which was it he said?

A. I just heard somebody say "Nick."

Q. You did not hear anybody say "Nolan?"

A. No, sir.

Q. You did not hear the name Nolan used at all?

A. No, sir.

Q. Mr. Gibson, I will ask you to state whether or not the grand jury in the Circuit Court investigated the lynching of Ed Johnson and the breaking of the jail shortly after it occurred?

A. Yes, sir.

2053 Q. Mr. J. S. Bell was the foreman of the grand jury, was he not?

A. Yes, sir.

Q. I will ask you to state if he is not one of the leading citizens of Chattanooga?

Mr. SANFORD. I object to that as entirely incompetent.

Mr. SHEPHERD. I will withdraw that part about Mr. Bell's being a leading citizen.

By Mr. SHEPHERD:

Q. He was the foreman of the grand jury?

A. Yes, sir.

Q. I will ask you to state whether or not you were examined as a witness before the grand jury touching this breaking of the jail and lynching of Ed Johnson?

A. Yes, sir.

Q. Was the district attorney-general or his assistant present when you were examined as a witness before the grand jury?

A. There was one of them present.

Q. State who conducted your examination when you were a witness there.

A. Why, Mr. Bell.

Mr. SANFORD. I object to all this examination as incompetent.

Mr. SHEPHERD. I want to show that this witness testified before the grand jury that he did not recognize any of the persons that were in the mob.

2054 By Mr. SHEPHERD:

Q. I will ask you to state whether or not the occurrences with reference to that mob, who were there, &c., were fresh on your mind at the time you were before the grand jury.

A. Yes, sir. I don't know—a short time after that, though—a few weeks.

Q. I will ask you to state if you did not, in reply to questions asked you by the foreman of the grand jury and others, state that you could not recognize anybody that was in that mob.

Mr. SANFORD. I object to that question as incompetent and calling for incompetent and irrelevant testimony.

Mr. SHEPHERD. Let him answer it subject to the objection.

A. Yes; I testified in the case.

By Mr. SHEPHERD:

Q. I will ask you to state if you testified the truth when you were before the grand jury?

A. Yes, sir.

Q. And in point of fact, at that time, you were not able to recognize anybody who took part in that mob?

A. No, sir.

Q. Why is it that you afterwards thought that you could recognize somebody that was in the mob?

A. I said maybe, in conversation—they asked me if I knew
2055 anybody in the mob. I was asked that question by different ones; and I said I did not; that I did think that one of the Nolan boys was there.

Q. One of the Nolan boys?

A. Yes, sir.

Q. Do you know how many Nolan boys there are?

A. I do not.

Q. You know at least two of them, do you not?

A. Yes, sir.

Q. Do you not know that there are three brothers of the Nolans?

A. Well, I don't really know. I know two of them.

Q. Mr. Gibson, do you not know that the Christian name "Nick" is a very common nickname that is applied to people?

A. Oh, there are lots of people by that name. I know of some.

Q. You know of some yourself?

A. Yes, sir.

Q. Some time after you had been before the grand jury as a witness, there were two special agents of the Government who called on you and interrogated you about this transaction, were there not?

A. Yes, sir.

Q. One of them was Mr. Dickey?
A. Yes; one of the men I see here. I didn't know his name.
Q. You do not know the other man's name?
A. No.

2056 Q. I will ask you if you made a verbal statement to them about what you knew as to who it was that participated in this lynching?

A. I made this statement, that I thought one of the Nolan boys was in it—that is, that I recognized one of the Nolan boys.
Q. State whether or not you know which one of the Nolan boys you were referring to.
A. Well, I didn't know.
Q. What did the special agent of the Government say to you in order to induce you to make a statement of that kind, Mr. Gibson?
A. Well, he said if he was me that he wouldn't employ any counsel myself. He didn't think the case, from what he had investigated—and then he said that he was satisfied that I must know all about that mob—something that way.
Q. Did he state anything about the kind of a case the Government had against you, or what the Government would do in the case against you?
A. He said that he didn't think they had any case against me, and if he was me he would not employ counsel.
Q. And then he proceeded to inform you that you knew all about the case, did he?
A. Yes, sir.
Q. And interrogated you about it?
A. Yes, sir.

2057 Mr. SANFORD. We object to statements made by the representatives of the Government as incompetent.

By Mr. SHEPHERD:

Q. I will ask you to state whether or not, in that conversation this special agent of the Government, after he had informed you that the Government did not have much of a case against you, and after he had told you that you must know a good deal about it, did not suggest to you that Nolan was there?
A. He called over his name. He had the names of the different ones.
Q. And he was the man that first suggested the name of Nolan to you?
A. I think in that conversation it come up. He said maybe that he thought—he says "you recognized Nolan," or something. I said I had made the remark that I thought one of the Nolans was there.
Q. But up to the time that you were before the grand jury and testified before the grand jury it had not occurred to you that you recognized either one of the Nolans there, had it?
A. No; I give my evidence that way.
Q. You meant to tell the truth there before the grand jury?

A. Yes, sir.

Q. And you were very closely questioned about that, were you not?

A. Yes, sir.

2058 Q. So that it was a considerable time afterwards that you came to conclude that one of the Nolans might have been there?

A. Well, I don't know that I made any such remark as that before the grand jury. I think, though, possibly I had that in my mind then.

Q. You had what in your mind?

A. That is, that I would have said in a casual way—I said I couldn't positively identify anybody. That is what I said.

Q. Now, is that the truth?

A. Yes, sir.

Q. And you wish to be understood now as swearing that you could not identify anybody there?

A. Yes. I couldn't positively identify anybody.

Q. And you merely thought it was Nick Nolan because somebody used the word "Nick" there, and because you saw a small man in the crowd?

A. There was a small man there, and I just got it in my head some way that it was Nolan, and I had heard "Nick" called in the crowd.

Q. State whether or not that small man that you saw there was a smaller man than the defendant Nick Nolan?

A. I think he was.

Recross-examination by Mr. SANFORD:

Q. Did you measure that man that night?

A. No, sir.

2059 Q. Did you have a tape measure?

A. No, sir.

Q. You do not know his height in inches, do you?

A. No, sir.

Q. Who has been talking to you since you were on the stand yesterday about this?

A. Why, Judge Shepherd asked me some questions.

Q. Who else?

A. Nobody else.

Q. Nobody else?

A. Well, my other lawyer here, Major Clift—no, I don't know—yes, Major Clift mentioned it to me.

Q. And you stated the truth yesterday? You swore the truth when you said that at the time you thought you recognized Nick Nolan? That was the truth when you swore it yesterday, was it not?

A. Well, yes; when I swore it I meant to swear the truth, but I thought you misunderstood me about my saying that I identified Nick Nolan—looked at him, you know, and identified him.

Q. Did you not say yesterday that you thought that you recognized Nick Nolan, that you heard the name——

A. I thought I recognized one of the Nolans when I seen him there.

Q. Did you not say that you knew Nick Nolan, and that you thought you recognized Nick Nolan, and did you not swear that at least once or twice yesterday on this witness stand?

2060 A. Well, I am telling you now how I meant to swear it. I don't know whether I did swear it.

Q. Do you deny that you said that yesterday?

A. No.

Q. If you said that yesterday, you intended to swear the truth, did you not?

A. I did.

Q. You say there are three brothers named Nolan. None of the others are named Nick, except this one, are they?

A. No; I reckon not. There wouldn't be two in the same family.

Q. How tall is Nick Nolan. You have been looking at him here. Is he not, in fact, a very small, short man?

A. Yes.

Q. Under the average?

A. Yes.

Q. That is a fact, is it not?

A. Yes.

Q. From your observation of him when he stood up just now you know that is the truth?

A. Yes, sir; he is not a tall man.

Q. He is under the average?

A. Well, possibly so.

Q. That is a fact, is it not. You have just looked at him. That is not only possibly so, but it is so, is it not?

A. Well, I guess he is; yes.

2061 Q. You know he is by looking at him?

A. Yes; he is smaller than the average man.

Q. When was it that you had the conversation with these representatives of the Government that you speak of?

A. I don't know what time it was.

Q. It was very soon after the lynching, was it not?

A. My impression is that it was some little time before I seen him.

Q. It was within about four weeks, was it not?

A. Well, four to six weeks.

Q. It was before the grand jury met, was it not?

A. I was under the impression that the grand jury met first.

Q. That is your recollection?

Q. Yes, sir.

Q. When you got to the jail that night did you hear of a telegram from Washington that Ed Johnson had been granted an appeal?

A. No.

Q. You did not?

A. Not at the jail; no.

Q. You did not hear that when you got to the jail?

A. No.

Q. Captain Brown did not tell you that?
A. No.
Q. He did not say a word to you about that?
A. No.
Q. Where did you hear it?
2062 A. I think I heard that—I take a paper. I presume I read it in the newspaper.
Q. You presume? Do you recollect about it?
A. No; I do not.
Q. And did not Captain Brown tell you about it when you got there?
A. No.
Q. Did you not hear about that telegram when you got to the jail?
A. No; there was no one in the jail when I went in.
Q. You did see Captain Brown?
A. Yes.
Q. Did you not state to those gentlemen that you have spoken about, whose names you do not remember, that as soon as you arrived at the jail you heard of the telegram from Washington granting the appeal of Ed Johnson, and from what you gathered and the condition of things at the jail you expected the mob to come for Johnson that night? Did you not make that statement to those gentlemen?
A. I don't think I did.
Q. Do you deny that you made that statement to them?
A. I don't think I did.
Q. I am asking you if you deny that you made that statement to these two representatives of the Government?
A. Well, I will give it just this way——
Q. I ask you if you deny that you made that statement?
A. Read that over again.
2063 Q. That as soon as you arrived at the jail you heard of the telegram from Washington granting the appeal of Ed. Johnson, and from what you gathered and from the condition of things about the jail you expected the mob to come for Johnson that night?
A. That is not true.
Q. You deny that you made that statement to those two men?
A. I deny making that statement, because I know I never thought it.
Q. And you deny that you made that statement, as I understand you?
A. Yes.
Q. Did you make that statement to these two men?
A. I did not.
Q. You have said you deny it. Did you state to these two men that you had given this woman on the upper floor the privilege to have a white man prisoner on the same floor do her writing, and that when you arrived at the jail she asked you where this white man was, and that you told her that he had been removed fearing an expected

mob? Did you not make that statement to these two representatives of the Government?

A. I did not make that statement.

Q. You did not make that statement to those two representatives of the Government?

A. The man had been removed——

Q. And did you not tell these two men that you further told her that the mob would not hurt a woman?

2064 A. I told her that when the mob was up. I told her I didn't think she need be uneasy; they probably wouldn't go in her room. She wanted me to unlock the door, and I couldn't do it.

Q. Did you not tell these two representatives of the Government that you told her that when you first got there, and when she asked you about this prisoner?

A. No; I didn't say that.

Q. Did you not tell these two representatives of the Government that you kne the members of the mob, or a g.eat many of them, but you declined to make any statement or affidavit and said that you were going to make your defense on your merits, and at the proper time and place you would make a statement?

A. Well, I didn't claim to know the names of the mobbers.

Q. Did you not tell them that you knew the members of the mob, or a great many of them, that you declined to make any statement or affidavit, but that you were going to make your defense on your merits, and at the proper time and place you would make a statement; that you had Clift and Cooke to represent you?

A. I told them that I wouldn't make a statement, and I said this way: That if they wanted me to make a statement to summons me in the regular way and I would make a statement of all I knew about it.

Q. And did you not tell them you knew the members of the mob, or a great many of them?

2065 A. No.

Q. Did you not tell them that when you arrived at the jail at about 6.30, you found Captain Brown there, who told you of the expected mob?

A. No.

Q. Did you not tell them that?

A. No.

Mr. SHEPHERD. Mr. Commissioner, I wish to note an objection to Mr. Sanford's examination of this witness upon the ground that it is a cross-examination of his own witness. So far as the witness' testimony reflects upon the defendant Nolan it is original testimony on the part of the Government, and I object to the counsel for the Government cross-examining the witness. I just want that noted in the record.

The COMMISSIONER. The stenographer will note the objection.

Mr. SHEPHERD. I want to introduce the foreman of the grand jury as soon as I can get him here, but he is not here now.

WILL BURK, a witness produced on behalf of the defendants, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Mr. Burk, are you on the police force of Chattanooga?

2066 A. Yes, sir.

Q. How long have you been a member of the police force?

A. Something over 12 years, since I was first appointed. I left the force for about three years.

Q. Were you on the police force in March, 1906, at the time of the lynching of Ed. Johnson?

A. I was.

Q. On the night of the lynching where was your beat?

A. My beat ran from Market to A street, 8th and 9th.

Q. From Market to A street?

A. Yes, sir.

Q. And from 8th to 9th on Market?

A. On Market, Cherry, and Georgia avenue.

Q. I will ask you whether or not that is an important beat?

A. It is considered the most important beat in the city.

Q. How near does the nearest point of your beat go to the jail, and where is the nearest point of your beat to the jail?

A. The nearest point of my beat to the jail would be on Georgia avenue and 8th street, a little over a block and a half from the jail.

Q. That is at or near the Times Building?

A. At the Times Building; yes, sir.

Q. And that is about a block and a half from the jail?

2067 A. About a block and a half.

Q. You say you were on that beat that night?

A. Yes, sir.

Q. I will ask you whether on that night, while you were on your beat, you heard of the lynching, or of any disturbance, and about what time it was when you heard it?

A. Yes, sir; I heard of it. I should judge it was something after 10 o'clock, at 8th and Market streets. An electric car stopped there and the motorman told me, "They have stripped my car."

Q. I do not care for the language of the motorman. Did the car have any ropes on it?

A. It had no ropes or bell rope on it.

Q. The ropes and bell cord were missing?

A. Missing; yes, sir.

Q. You received from him information as to what had become of them?

A. The motorman, or the conductor, one, told me that they had taken them to lynch the nigger.

Mr. SANFORD. I object to that. You did not call for that.

Mr. PRITCHARD. No.

By Mr. PRITCHARD:

Q. You got the information that they had been used for the lynching. You then heard of the lynching?

A. Yes, sir.

Q. That was about what time?

A. I should say it was something after ten.

2068 Q. Had you heard of any noise or any indication of any mob, or anything of that sort?

A. No, sir.

Q. What did you do when you got this information?

A. I walked back to 9th street on Market and then from Market back to 8th street.

Q. Did you go as near to the jail as your beat permitted or not?

A. Not then; I didn't. They told me the nigger was on the bridge.

Mr. SANFORD. I object to the statement of what he was told as hearsay.

By Mr. PRITCHARD:

Q. You heard that the nigger had been taken away?

A. Yes, sir.

Q. After you got that information did you see any deputies, and if so, where?

A. I guess about five or six minutes after I got the information I saw Mr. Galloway, Mr. Baker, and Fred Frawley.

Q. Where were they?

A. They were running across Market street, from about the center of the block on the west side to near in front of Loveman's, in a northeasterly direction, and ran up 8th street.

Q. In the direction of the jail?

A. Yes, sir.

Q. And coming from about the center of the block on Market between 8th and 9th?

2069 A. Yes, sir.

Q. Did they tell you about the lynching?

A. They didn't tell me anything. I told them they was too late; that the nigger was already dead.

Q. You hollered to them?

A. Yes, sir.

Q. You knew without their telling you. How came they to mention the nigger?

Mr. SANFORD. I object to that as incompetent.

Mr. PRITCHARD. I insist it is proper.

A. I supposed they had heard there was some trouble up there and they were going up there to do what they could. They were going in that direction.

By Mr. PRITCHARD:

Q. And you gave them what information?

A. I told them they needn't be in such a hurry; the nigger was already dead.

Q. That information you say you had received from——
A. The car man.
Q. Whose car had been divested of its ropes?
A. Yes, sir.
Q. Were they going rapidly?
A. Yes, sir; they were on a trot.
Q. You were on that beat, you say, that night. Had you seen or heard anything of any disturbance?
A. Not a bit in the world.
Q. Did you know of any disturbance?
A. No, sir.
2070 Q. Was there any indication of any mob or crowd on your beat that you saw?
A. None whatever.
Q. How near, then, did you approach the jail?
A. I went to the Times office, at 8th and Georgia avenue.
Q. Was that as far as you could go on your beat?
A. Yes, sir.
Q. That was after this information, you say?
A. Yes, sir.
Q. Did you look towards the jail?
A. I did.
Q. What did you see there, if anything?
A. I didn't see anything. There was nobody on the streets at all, and I didn't hear any disturbance.
Q. I will ask you to state whether or not the town was quiet or in a disturbed condition that night?
A. It was quiet.
Q. I will ask you, Mr. Burk, whether or not, immediately previous to this, you had seen any collections of people or heard any discussions or anything to indicate that a mob was collecting, or was about to do execution upon Johnson?
A. I did not, sir. It was an absolute surprise.
Q. When you saw these men and told them that they need not be in such a hurry, that the nigger was dead, did they make any stop, or continue on their way?
A. They never halted and never answered me.
2071 Q. Do you know where the Eagles Club is?
A. Yes, sir.
Q. Is it between 8th and 9th on Market street?
A. Yes, sir.
Q. Were they coming from the direction of about the center of that block?
A. About the center of that block; yes, sir. I noticed them just a few doors north of the Eagles Club.

Cross-examination by Mr. SANDFORD:

Q. They were all three together?
A. Yes, sir.

Q. How close had your beat taken you that night to the jail?
A. Well, a square and a half, sir.
Q. How often had you been within a square and a half of the jail that night?
A. Well, I couldn't say; possibly four or five times.
Q. How far were you from the jail the rest of the time? Were you within two or three blocks most of the time?
A. I was within four blocks of it at all times.
Q. Nobody had come to you and called for any assistance in suppressing a mob?
A. No, sir.
Q. And in preventing the lynching?
2072 A. No, sir.
Q. You had not been asked to do anything towards stopping the mob at all?
A. No, sir.
Q. And had you not heard, at the time that these men ran by you, that the lynchers were having some trouble out there at the jail; that somebody at the bridge was firing at them, after they lynched Johnson?
A. I didn't hear anything about that, sir. I didn't hear that till the next morning.

MATT GALLOWAY, a witness produced on his own behalf, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Mr. Galloway, are you one of the defendants in this case?
A. Yes, sir.
Q. You are a deputy under Sheriff Shipp?
A. Yes, sir.
Q. How long have you been in that position?
A. Ever since Captain Shipp has been sheriff. I don't recollect just how long.
Q. What is your age?
A. 37—I will be on my next birthday.
2073 Q. Where do you live?
A. East Chattanooga—Sherman Heights.
Q. Are you a married man or a single man, Mr. Galloway?
A. Married.
Q. As deputy sheriff, what are your duties? What were your duties in March, 1906, and previously?
A. I have been a criminal-court deputy ever since I was an officer. I have been an officer under Captain Shipp.
Q. What do you do as criminal-court deputy?
A. I serve criminal-court papers, and make arrests.
Q. You serve subpœnas?
A. Yes, sir.

Q. And writs for the arrest of criminals?

A. Yes, sir.

Q. Has that been your line of service ever since you have been a deputy?

A. Yes, sir.

Q. I will ask you to state whether you have any charge of the jail or have ever had any charge or connection with the keeping of prisoners in the jail.

A. Nothing, only when I was ordered there to guard at night, and three or four days during Johnson's trial.

Q. At any other time had you had anything to do with keeping the jail——

A. No, sir.

Q. ——except during the three or four days of Johnson's trial?

2074 A. That is all.

Q. Had you ever been charged with the duty, or had it ever been incumbent upon you in any way or any part of your business——

A. No, sir.

Q. ——to exercise any supervision over the jail or to guard or protect the prisoners?

A. No, sir.

Q. You say that during a certain time of Johnson's trial you were there. How many days were you there, or nights, or whatever it was, as near as you can recollect?

A. I have no exact recollection. I think it was some six or eight nights.

Q. How long previous to the lynching of Johnson had you guarded the jail?

A. My best recollection is it was some four or five weeks.

Q. Had you guarded the jail or been at the jail as a guard, or had any sort of connection with the keeping of the jail or the prisoners, at any time after Johnson was brought back from Knoxville on or about the 10th or 11th of March?

A. I had not.

Q. Had you been about the jail at all during that period?

A. Why, yes, sir; I had been at the jail. In fact, I was at the jail every day, nearly.

2075 Q. Except for the purpose of carrying prisoners or getting prisoners? I mean had you been there for the purpose of guarding the jail?

A. No, sir; I had not.

Q. On the day of the lynching of Johnson do you remember that you were at the jail at all?

A. I am not positive. It seemed like I was. I am not positive.

Q. Do you remember what you were doing that day?

A. Nothing, only by knowing the criminal court was in session. I suppose I was serving subpœnas.

Q. You have no distinct recollection of it except knowing what your regular business was?

A. No, sir.

Q. Had you, in executing your duties and serving papers for the criminal court, seen or heard of anything that made you think that Johnson was in danger?

A. No, sir.

Q. Had you received any intimation of any desire that you should be at the jail for the protection of Johnson?

A. I did not.

Q. Had you heard any threats of lynching, or of any disturbance?

A. No, sir.

Q. You say your duties called you in the execution of process every day?

A. When court is in session; yes, sir.

2076 Q. How long had the criminal court been in session; do you remember? This was the 19th of March. When does the court convene?

A. The second Monday in January, I think; and then we have an adjourned term some time a month afterwards.

Q. Do you remember how long this court that was sitting in March had been in session?

A. No, sir; I do not.

Q. The regular term convenes the second Monday in January?

A. Yes, sir.

Q. Do you know whether or not there had been any adjournment between the second Monday in January and the 19th of March?

A. Nothing, only judging by the way it is generally run.

Q. Do you have any recollection of that particular term, whether there had been any adjournment or not?

A. No, sir. I just judge from the fact that they generally hold a month or six weeks, the regular term, and then hold an adjourned term.

Q. They generally hold about six weeks at a time?

A. Yes, sir.

Q. With an intermission, and then resume?

A. Yes, sir.

Q. On the night that Johnson was lynched where were you?

A. I was at the Eagle clubroom.

2077 Q. Who was there with you? Who do you recollect being there?

A. Jim Elliott was there.

Q. Was Baker there?

A. Yes, sir.

Q. Who else?

A. Fred Frawley was there.

Q. Mention any others that you recall as being there.

A. A Jew by the name of Schwartz.

Q. What is his given name?

A. I don't know.
Q. Schwartz?
A. Yes, sir.
Q. Mention any others that you recall.
A. I don't know. There was a pretty good crowd. I don't recollect any of them.
Q. Is that a club of which you are a member?
A. Yes, sir.
Q. Were these other gentlemen that you have mentioned members of that club?
A. They were.
Q. I will ask you about how long you had been a member of that club?
A. If I recollect now it has been about three years—two and a half or three years.
Q. Was it unusual or otherwise for you to be at that club?
A. No, sir; I have been there three or four nights in the week, generally; sometimes every night.
2078 Q. What other clubs or societies do you belong to besides the Eagle?
A. I belong to the Masons, Oddfellows, Knights of Pythias, Rebekahs, Fraternal Censer, Junior Order, and the Iron Molders' Union.
Mr. SANFORD: I object to that as irrelevant and material.

By Mr. PRITCHARD:

Q. You seem to belong to several of them. Do you remember where you had taken supper that night, Mr. Galloway?
A. I am not positive about it. I generally take my meals at Seiter's restaurant. I am not positive.
Q. When you are in town you take your meals there?
A. Yes, sir.
Q. When you are in town do you or not eat at either that or some other restaurant?
A. Yes, sir.
Q. And usually at Seiter's?
A. That is the only place I take my meals.
Q. Have you any definite recollection as to where you did eat that night?
A. No, sir; I have not.
Q. What time did you go to the Eagles Club?
A. I am not positive, but I think it was a few minutes before 8 o'clock; probably 7.45.
Q. Who were with you there?
A. I met up with Jim Elliott at 9th and Market, and
2079 we went up together.
Q. Were Baker and Frawley there when you got there, or did they come later?
A. I don't recollect what time they got there. They didn't go with me up there. I don't recollect the time they came in.

Q. Had you any appointment with them to meet there, or did you know they would be there?

A. No, sir; I did not.

Q. Had you, at the time you went to the clubroom, heard anything about any impending lynching or any impending danger?

A. No, sir.

Q. How long had you been there when you got any information, if you did get any information, of any lynching?

A. It was sometime after 10 o'clock. I don't remember just what time it was.

Q. How did the information reach you?

A. Some one said that they were lynching Johnson, or trying to get him out of the jail, or something of that effect. I don't recollect just the words.

Q. Was it some one that came in, or who was it that said that? Do you remember who it was?

A. I suppose it was some one that came in. I don't know who it was.

Q. They said that they were lynching Johnson, or trying to lynch him, or something to that effect?

A. Yes, sir.

2080 Q. What did you do?

A. Well, I left and went to the jail.

Q. Did you leave deliberately or in a hurry?

A. I left immediately.

Q. Who were with you?

A. Baker and Frawley.

Q. Were you armed?

A. I had a revolver; yes, sir.

Q. I will ask you if you recall passing policeman Burk as you were on your way to the jail?

A. No, sir; I do not.

Q. In what direction did you go to the jail?

A. I went angling across the street from the clubroom to 8th, up 8th to Cherry, from Cherry to 7th, and up 7th to Walnut.

Q. Is that or not the most direct route from the Eagles Club to the jail?

A. Yes, sir; it is.

Q. The Eagles Club is situated where. Did you state where?

A. Between 8th and 9th on Market street.

Q. About how far from the middle of the block?

A. It is some nearer 9th street than it is 8th.

Mr. SANFORD. Just ask him directly how far it is from the jail.

Mr. PRITCHARD. I am just trying to locate it in a general way.

By Mr. PRITCHARD:

2081 Q. It is about the middle of the block?

A. Yes, sir.

Q. In going from the Eagles Club you say you want angling across Market street?

A. Yes, sir.

Q. Angling across Market to the corner of 8th?

A. Yes, sir.

Q. And then up 8th?

A. Up 8th to Cherry.

Q. To Cherry and then to the jail. Now when you got to the jail, Mr. Galloway, what did you find?

A. I met Captain Shipp just coming outside the door.

Q. What was said, if anything?

Mr. SANFORD. I object to statements between the two defendants as incompetent, hearsay, and immaterial.

Mr. PRITCHARD. I do not care to go into details.

By Mr. PRITCHARD:

Q. Did you ascertain that they had gone with the prisoner?

A. I did.

Q. What did you do then?

A. He asked me to go to the bridge.

Mr. SANFORD. I keep up my objection to conversations between the defendants.

Mr. PRITCHARD. These are official orders that I am trying to show now.

Mr. SANFORD. I keep up my objection, nevertheless.

By Mr. PRITCHARD:

208? Q. Did you go there, and what did you do before you went?

A. I told him as soon as I could get a gun.

Q. You had a gun—a pistol?

A. Yes, sir.

Q. What did you mean by getting a gun?

A. I wanted a Winchester rifle.

Q. Did you get a gun?

A. I did.

Q. Did you find the gun loaded, or what condition was it in?

A. I tried one that had seven loads in it. I took out the seven loads and started to fill up the magazine of another. You can't tell how many loads a Winchester has got in until you try. I think there was three.

Q. You found three shells in another gun?

A. No; it was full except three.

Q. How many did it hold?

A. They are supposed to hold 16, but they don't hold that many.

Q. You found three in one gun and some others in another gun?

A. Yes, sir.

Q. Did you fill up the magazine?

A. Yes, sir.

Q. Then what did you do?

A. I went to the bridge on an electric car.

Q. Did you have to wait for the car, or how was that?

2083 A. No, sir; the car came along about the time I come out of the door. There were several others getting on the car.

Q. Who else went with you of the deputies?

A. Baker and Perkins.

Q. Baker and Marion Perkins?

A. Yes, sir.

Q. Did Baker have a gun? Did he get a gun?

A. Yes, sir.

Q. What did you go to the bridge for? What was your purpose in going there?

A. I went there to rescue Johnson.

Q. Who else was on the car, that you remember?

A. I don't recollect anybody but the motorman and conductor, except as they told me afterwards.

Q. Do you remember whether Squire Ware was on that car?

A. No, sir.

Q. You do not remember?

A. No, sir.

Q. State whether or not the car went immediately and rapidly to the bridge?

A. Well, I guess it was on its usual time.

Q. Was that the quickest way you could get to the bridge?

A. It was.

Q. When you reached the bridge what did you find?

2084 A. Well, I found the body of Johnson laying on the bridge. He was dead.

Q. Were there any persons there?

A. How is that?

Q. Was there anybody there?

A. There was several standing around; yes, sir.

Q. You say the man was dead?

A. Yes, sir.

Q. Did you examine the body?

A. Oh, I didn't take hold of it. I just stooped over it to see if he was dead.

Q. Did you recognize it as Johnson's body?

A. No, sir; I can't say that I did.

Q. Did you know Johnson by sight?

A. Why, yes, I knew him; I guess I would know him, but I am not positive about that.

Q. But it was a negro man?

A. Yes, sir.

Q. And he was dead?

A. Yes, sir.

Q. What did you do then?

A. Well, about that time somebody run down to cut off some of his undershirt and Baker pushed him back and told him not to touch him.

Q. Some man started to cut off a piece of his undershirt?

A. Yes, sir; a bystander or somebody, out of curiosity.

2085 Q. State whether or not the mob had dispersed before you got there. Did you see any armed men or anybody with weapons there?

A. No, sir; I did not. I didn't see a gun anywhere only what Baker and myself had.

Q. How long was it before the wagon came and took him away?

A. I left before the wagon came back. I came back to the jail immediately after I saw him.

Q. How long did you stay at the jail that night?

A. I suppose it was 1 o'clock before I left there that night.

Q. You think you were not at the jail that evening until after the lynching occurred?

A. No, sir.

Q. I will ask you to state whether or not you were there with Frawley and others, and had a beer lunch, or anything of the sort, at the jail that night?

A. The night Johnson was lynched?

Q. The night Johnson was lynched.

A. No, sir; I did not.

Q. Did anything of that sort occur, Mr. Galloway?

A. No, sir.

Q. That nigger, Walker, they had here swore to that.

A. Walker has fixed our supper there when we was guarding Johnson, but he didn't fix it the night of the lynching.

2086 Q. He mentioned a number of deputies that were there that night. When you got there were there any deputies there except the ones that were with you and Perkins?

A. Perkins was in about 20 feet of the sidewalk, I guess, when I went in—coming out.

Q. Coming out of the jail?

A. Yes, sir.

Q. Was there any other deputy there that you saw except Baker, Frawley, and yourself?

A. No, sir.

Q. Mr. Galloway, had you agreed to allow Johnson to be lynched?

A. No, sir; I did not.

Q. With any of the lynchers or anybody else?

A. I had not.

Q. Had you combined or confederated with anybody——

A. No, sir; I had not.

Q. To have Johnson lynched?

A. No.

Q. Did you know anything about anybody having any intention to lynch him?

A. No, sir; I did not.

Q. I will ask you if you were there at the jail when they tried to lynch Johnson the first time?

A. I was.

Q. What were you doing there?

A. Captain Brown called me up. I was on Montgomery avenue. He told me they were expecting trouble, and wished I would come over as quick as I could get there.

Q. Did you go?

2087 A. Yes, sir.

Q. I will ask you what you did there and what occurred?

A. Well, there was a mob there trying to get into the jail.

Q. Did they get in?

A. No, sir.

Q. Who kept them from getting in?

A. Why, I helped to keep them from getting in.

Q. You helped do it?

A. Yes, sir.

Q. There has been some testimony about three or four different parties dispersing that mob. I will ask you how that mob was actually dispersed?

A. Well——

Q. Whether the military and police dispersed it?

A. They helped do it.

Q. What condition was it in at the time of that dispersal?

A. When I first got to the jail Chief Moseley and George Brown was at this iron door, and all the front part of the jail was full of men. Some had guns and some pistols. I got to the door, and Chief Moseley give me his place.

Q. When you got there Moseley gave you his place?

A. Yes, sir. Me and Brown held the door there for I guess an hour, or something like that, till we got assistance.

2088 Q. How many were in that crowd that you held the door against?

A. I have no idea. The yard was full and the office was full.

Q. Of armed men?

A. I couldn't see on the outside; I could only hear them talk. There were several armed men on the inside of the jail or office.

Q. A good many of them, you say, were on the outside and a good many on the inside?

A. Yes, sir.

Q. Was there any tearing down of jail doors done then, or had it been done up to that time?

A. No, sir.

Q. When was the committee sent through, and how did the committee come to go through from the mob?

A. Well, we told them that Johnson wasn't there, and they wanted Westfield and Smith.

Q. They wanted Westfield and Smith?

A. Yes, sir.

Q. Go ahead. What about the committee?

A. Well, we had an argument there for 30 minutes about the number of the committee that should go through. We were trying to get a number that we could handle, and I thought we could handle three all right. We chewed the rag around there till we got assistance to control them.

Q. You argued about the number of the committee until assistance came?

2089 A. Yes, sir.

Q. Had the jail been broken into at all then?

A. No, sir.

Q. When the committee finally went in, what occurred?

A. Well, I think we got them all out of the front part of the jail—that is—the office, at that time and closed the outside door.

Q. I will ask you whether a report went out that you were locking the committee up or anything of that sort?

A. Well, I understood after that it was.

Mr. SANFORD. I object to what he understood afterwards?

By Mr. PRITCHARD:

Q. While the committee was in there, state whether there was any attempt to tear down the jail.

A. That was when they commenced shooting and tearing down the front door and knocking windows out of the front part of the building.

Q. That was after the committee had got in and after you had locked the front door?

A. Yes, sir.

Q. Had the committee been convinced that Johnson was not there?

A. I don't think that committee ever went through. I think they tried to lock them up and they promised to leave, or some-

2090 thing, and they turned them out. Then there was another committee, according to my recollection, that went through. After we got assistance so that we could handle the crowd, we did let a committee go through.

Q. I want you to state whether or not you and Brown had held that jail against the mob, and for how long you had held it.

A. Fully an hour.

Q. Before this relief came?

A. Yes, sir.

Q. I will ask you to state whether or not you made any announcement to the mob of what you would do if they proceeded to make an entry into the jail while you and Brown were there; and, if so, what it was.

A. Well, I made several remarks that they couldn't get in.

Q. State what you said—whether or not you announced to the mob that you would kill the first man who put his foot in there, whether he was friend or foe?

A. I did.

Mr. SANFORD. I object to that as leading and incompetent.

The WITNESS. That is right; that is what I told them. We had quite an argument every once in a while.

By Mr. PRITCHARD:

Q. Would you have done it, Mr. Galloway?

A. I would have tried it. I don't know whether I would have done it or not.

Mr. SANFORD. I object.

2091 Mr. PRITCHARD. I am showing that he was willing to risk his life to save a negro, and finally did risk his life.

The WITNESS. I told them if they went in there they would go in over my dead body.

Mr. PRITCHARD. That is what I would have done.

Mr. SANFORD. I object to all those matters, even to what the distinguished attorney would have done.

By Mr. PRITCHARD:

Q. You were right there in front of the mob?

A. Yes, sir.

Q. You made that announcement?

A. Yes, sir.

Q. And you held the door for an hour, you and Brown?

A. Fully an hour.

Mr. SANFORD. The objection is continued.

By Mr. PRITCHARD:

Q. I will ask you whether the mob held guns on you and threatened your life?

A. Yes, sir.

Q. I will ask you, Mr. Galloway, whether, if you had known or had had any intimation of this lynching, you would have done the same thing for the protection of Johnson in this case?

A. I would.

Mr. SANFORD. I object to that as purely hypothetical.

By Mr. PRITCHARD:

Q. You say you would?

2092 A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. How long have you been living in Chattanooga, Mr. Galloway?

A. I have been living at Sherman Heights about nine years.

Q. What was your regular occupation before you became a deputy?

A. I am a moulder by trade.

Q. Where had you practiced your trade before?

A. Before coming here?

Q. Yes. You have been in Bradley County, have you not?

A. I partly served my time as moulder in the Cleveland Stove Works, Cleveland, Tennessee, Bradley County.

Q. You have been in Knoxville for a while, too, have you not?

A. I was born in Knoxville, but I never worked there.

Q. You lived there some years?
A. I think I was about 11 or 12 years old when I lived there.
Q. And then you went to Bradley County?
A. I went to Cedartown, Georgia, from there.
Q. And from there to Bradley County?
A. From there to Harrison County, Georgia; Tallapoosa is the name of the town.
2093 Q. Where did you go then?
A. From there I went to Cleveland.
Q. And then from Cleveland here?
A. Yes, sir.
Q. Did you practice any other trade or engage in any other business during that time except that of an iron moulder?
A. Well, I worked as an engineer, stationary engineer—hoisting engineer.
Q. Anything else?
A. No, sir; not that I recollect of just now.
Q. How long did you live in Bradley County?
A. I don't know; some four or five years, three or four years, something like that.
Q. How often did you say you were in the habit of going to the Eagles club at night?
A. Well, sometimes I go three or four nights.
Q. During the week?
A. Yes, sir; sometimes every night in the week.
Q. How many deputy sheriffs belonged to that order?
A. Myself, Baker, Frawley, and Kirkland, I think, is the only deputy sheriffs.
Q. Kirkland is not a defendant in this case?
A. No, sir.
Q. Did the sheriff, himself, ever belong at any time?
A. No, sir.
Q. Did you have a telephone in the Eagles clubroom?
A. Yes, sir.
2094 Q. How many of the other defendants in this case belonged to that order or club? Is it an order or a club?
A. It is the Fraternal Order of Eagles. It is a fraternal order.
Q. It has clubrooms?
A. It has a clubroom; yes, sir.
Q. How many of the other defendants belong?
A. Nick Nolan belongs. If you call them over I can tell better.
Q. I will read the list of the defendants at your request. John F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker——
A. Baker is one.
Q. C. B. Taylor——
A. He don't belong.
Q. George Brown, Jeremiah Gibson—just answer yes if they did belong; you need not say anything if they did not—Marion Perkins, Joseph Clark, Nick Nolan——

A. Yes.

Q. "Sheenie" Warner, Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, Bart Justice, John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond.

A. Not that I recollect of.

Q. You do not recollect any of them?

A. No, sir.

2095 Q. Who is the Mr. Elliott that you speak of as having been there that night?

A. Jim Elliott.

Q. What is his business?

A. He is in the saloon business.

Q. Who is the Mr. Schwartz? What are his initials?

A. I don't know.

Q. What business is he in?

A. He attends to the buffet at the Eagles.

Q. Your recollection is, or your impression rather, as I understand it, that you were probably around the criminal court all the day of the lynching. You have no definite recollection, as I understand?

A. I didn't say that; I don't remember.

Q. That was what you usually did when the criminal court was in session.

A. No, sir; there is a good deal of the time that I am never in the court room.

Q. Do you remember whether or not you were there on that day?

A. No, sir.

Q. Had you heard of the telegram or the news from Washington that an appeal and stay of execution had been granted in Ed. Johnson's case before the lynching occurred?

A. Yes, sir; I think I did.

Q. Who told you?

A. I think I read it in the paper that evening.

Q. That evening?

A. Yes, sir.

2096 Q. Were you told about it during the day?

A. No, sir.

Q. Did the sheriff tell you about it?

A. No, sir.

Q. Did he send you any message in reference to it?

A. No, sir.

Q. Did any deputy tell you about it or send you any message from the sheriff in regard to the matter?

A. No, sir.

Q. Were you summoned to be at the jail that night?

A. No, sir.

Q. You have been present during the examination of almost all the witnesses, have you not, Mr. Galloway?

A. Yes, sir.

Q. During this case you have been constantly in the court room?
A. Yes, sir.
Q. And Sheriff Shipp has been here also, has he not?
A. Yes, sir. I missed a day or two.
Q. But most of the time you have been here?
A. Most of the time I have been here; yes.
Q. Take the jail on the inside, after you get beyond the locked doors that separate the jail proper from the office, and take the fourth floor where Ed. Johnson was confined; what windows are there on that floor, or what means of outlet would a man inside have through the windows?
A. None at all.
Q. Are there no windows in the hospital cell?
2097 A. There are windows there, but iron bars over them.
Q. I mean a man could call out, could he not, through those windows?
A. Yes, sir; he might call out.
Q. There is a house on one side very close, is there not?
A. Yes, sir; I guess there is a house 25 or 30 feet away on the south side.
Q. What is next to that house?
A. Well, they are all dwelling houses.
Q. There are a lot of dwelling houses along there in a row, and right close together, are they not?
A. Yes, sir.
Q. And they are houses that were occupied and inhabited at that time?
A. They were.
Q. When did you first go to the Eagles Club that night?
A. I think it was a few minutes before 8.
Q. Whom did you go with?
A. Jim Elliott.
Q. And you do not remember where you went to supper?
A. No, sir; I don't recollect. The only thing I know is what my habit was.
Q. Where were you in the habit of taking your supper?
A. At Seiter's restaurant.
Q. How far is that from the Eagles Club?
2098 A. I believe it is the first door off of Market street on 9th; about half a block.
Q. Do you remember anybody else you met at the Eagles that night?
A. No, sir; only I have had several tell me they seen me up there. I don't recollect.
Q. You do not recollect yourself?
A. No, sir.
Q. Was it a meeting night?
A. No, sir.

Q. What were you doing while you were there; what were you engaged in?
A. Playing freeze out.
Q. What kind of game is that?
A. Well, it is a card game.
Q. Were you playing for money or not?
A. No, sir.
Mr. PRITCHARD. Tell Mr. Sanford how to play it.
The WITNESS. I expect Mr. Sanford knows that.

By Mr. SANFORD:

Q. It is a card game, and you say you were not playing for money?
A. No, sir; we were not.
Q. How long did you stay there?
A. I stayed there till the word come that there was a mob at the jail.
Q. Did you not hear Policeman Burk tell you as you went by that Johnson had been lynched?
A. No, sir; I did not.
Q. You did not hear that?
2099 A. No, sir. If I did I have got no recollection of it.
Q. Do you deny that he told you that?
A. I deny ever hearing it, or recollecting hearing it.
Q. You deny recollecting it?
A. Yes, sir.
Q. Did you not know before you got to the jail that Ed. Johnson had been lynched?
A. I did not.
Q. Did you not know when you got to the jail, and before you started towards the bridge, that he had been lynched?
A. I did not.
Q. Did you see Taylor there—Deputy Sheriff Taylor?
A. No, sir.
Q. Did he not go out with you?
A. If he did, I don't recollect it?
Q. You do not recollect it?
A. No, sir; I don't recollect seeing him.
Q. Who else was there besides Perkins, Baker, and Frawley?
A. No one that I seen.
Q. Did anybody else come in before you left?
A. Not that I recollect.
Q. Did you see Judge McReynolds?
A. Not till I came back from the bridge.
Q. Did you see Attorney-General Whittaker?
2100 A. I don't recollect seeing him at all. He might have been there, of course, in that excitement, but I don't recollect seeing him.
Q. Who did you recognize out there at the bridge?

A. Andy Ware is the first man I seen at the south end of the bridge as I went over.

Q. Who else did you see?

A. That is the only one I recollect seeing.

Q. You did not recognize anybody else out there except Andy Ware?

A. That is the only one I recall to mind now.

Q. How many people were there out there when you got there?

A. Oh, there must have been a hundred or more.

Q. Did you talk to anybody?

A. No, sir.

Q. How long did you stay there?

A. About five minutes, I guess.

Q. Five minutes?

A. Yes, sir.

Q. How long did you wait for that car to go to the bridge?

A. I didn't wait at all.

Q. It came up just as you went out?

A. Yes, sir. I had to run to catch it.

Q. And you stayed out there at the bridge about five minutes?

A. I don't think it was longer than that.

2101 Q. Mr. Galloway, I will ask you if this occurred while you were there at the bridge that night: That some one asked you "What are you doing with that gun," and that you replied: "I came up here to defend the men who took the negro out. I heard the negroes were coming up." Did you make that remark?

A. No, sir; I did not.

Q. You did not make that statement?

A. No, sir; I did not.

Q. You did not recognize anybody out there but Andy Ware?—A. J. Ware?

A. I think that is the only one; and he was coming away from the body of Johnson; I guess it was 300 feet from the body of Johnson. He was on the south end of the bridge, and Johnson's body must have been, as well as I recollect, 300 feet on the bridge.

Q. You have heard about the different "rows," as I believe somebody called them, that you have been in?

A. Yes, sir.

Q. Have you ever been in any other trouble in this county?

A. No, sir; not that I recollect.

Q. Did you ever get into any trouble in Bradley County?

A. No, sir.

Q. Or in any other place?

2102 A. I was put in jail in Bradley County at one time for not testifying before the grand jury, when I was a boy about 19 years old.

Q. Did you get in any other trouble there?

A. No, sir.

Q. Have you ever been indicted for anything?

A. No, sir; I never was.
Q. In any other place?
A. No, sir. I never was indicted in my life.
Q. Did you speak to Andy Ware at the bridge; do you r'member?
A. Yes, sir; I spoke to him, or rather he spoke to me. I didn't notice him until he spoke.
Q. You remember having a conversation with him?
A. There was no conversation. He spoke a word or two as I passed on by him, going to where the body of Johnson was.
Q. That is all you remember about it?
A. Yes, sir.
Q. Did he go back with you to the jail, or to the body?
A. Not that I recollect. He kind of stopped as he hollered at me, and I don't know where he went. I never paid any attention to him.
Q. How long was it after that before you got back to the jail?
A. I don't recollect.
Q. Give us your best impression.
A. Why, I don't think I was gone over 30 minutes.
Q. Did you go back on the street car?
2103 A. No, sir; I think I walked back.
Q. You think you walked back?
A. Yes, sir.

2104 C. A. BAKER, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. LYNCH:

Q. Mr. Baker, are you one of Captain Shipp's deputies?
A. Yes, sir.
Q. How long have you been a deputy?
A. Since Captain Shipp was first elected—I think going on about four years; three years now, perhaps.
Q. Were you appointed when he was first elected?
A. Yes, sir.
Q. And you have been a deputy constantly since then, have you?
A. Yes, sir.
Q. I will ask you, Mr. Baker, if you had anything to do with getting Ed. Johnson away from here the first time he was taken by Captain Shipp out of the county?
A. I did.
Q. What did you do, and what did Captain Shipp do?
A. We left here the same day he was arrested, about 4 o'clock or a little before that, perhaps. We taken him out of the rear entrance of the jail and went up 6th street and caught a street car and went to Boyce Station and caught the Oakdale accommodation there. We taken him to Dayton, Tennessee.
Q. Did you take another darkey along at the same time?

2105 A. Yes, sir.

Q. What was the other darkey's name? Wyatt?

A. Yes, sir.

Q. He was also accused of the same crime?

A. Yes, sir. One was arrested at night and the other in the morning.

Q. Did you after that assist in getting him out of the county again? Did you take him away again?

A. Yes, sir; we left the second time.

Q. Where did you take him that time?

A. To Knoxville.

Q. Who with?

A. There was Floyd Westfield and Ed. Smith and Johnson.

Q. You assisted Captain Shipp in doing that?

A. Yes, sir.

Q. I will ask you if you assisted in the defense of the jail at the time they assaulted the jail?

A. The first time?

Q. Yes.

A. No, sir; I was in Dayton, Tennessee, with Ed. Johnson and Wyatt.

Q. I will ask you where you were on the day and night that Johnson was lynched?

A. I was around over the city.

Q. I mean, were you here in Chattanooga?

A. Yes, sir.

Q. Where were you that day, and what were you doing?

2106 You say you were around over the city. What were you doing?

A. I was serving papers. My usual avocation was around over the city.

Q. For which court?

A. The criminal court.

Q. Where were you that night?

A. I went to the Eagles' Hall that night.

Q. About what time?

A. I should judge not far from 8 o'clock. I came in after supper.

Q. Had you heard any suggestion or hint that day or that night that Johnson was likely to be lynched?

A. None whatever.

Q. Did you have any communication with Captain Shipp on that subject?

A. No, sir.

Q. Or with Mr. Frawley?

A. No, sir.

Q. Or with Mr. Clark?

A. No, sir.

Q. Or with any of the deputies?

A. No, sir.

Q. Did you have any communication, or any understanding, with any of the supposed lynchers or mobbers?

A. No, sir.

Q. I will ask you if you had heard it suggested that day or that night that there was likely to be or probably would be a lynching of Johnson?

2107 A. I never heard anything of the kind at all.

Q. Did anything occur that aroused your suspicion that there might be such a thing?

A. No, sir.

Q. Did you have any such suspicion of any such action?

A. No, sir.

Q. Now, you say you went to the Eagles' Club that night?

A. Yes, sir.

Q. What did you do there?

A. We were playing cards.

Q. Who all did you see there?

A. The game I was playing in Mr. Frawley was in, and Jim Elliott and Matt Galloway and myself.

Q. What time did you leave the Eagles' Club that night, and what was the occasion of it?

A. I don't remember now who brought the news there, but somebody brought the news there that there was a mob at the jail, or something of that effect.

Q. Then what did you do?

A. I got up and left immediately.

Q. Who with?

A. Matt Galloway and Fred Frawley.

Q. Where did you go?

A. Directly to the jail.

Q. In what manner did you go?

A. We run most all the way.

2108 Q. Do you remember seeing or passing anyone on the way up there that gave you any information about it?

A. I remember Mr. Burk hollered something as we passed by. I don't remember what he said.

Q. Was that a policeman?

A. Yes, sir.

Q. What did you find when you got up to the jail?

A. They had already gone from the jail before we got there.

Q. Who did you see there at the jail?

A. I think I saw Captain Shipp, was the only person I remember of now. I wasn't there but a second.

Q. Did you get information there of where the mob had gone to?

A. Yes, sir; I believe he told us to go to the bridge as soon as we could. I am satisfied he told us——

Mr. SANFORD. I object to that testimony.

By Mr. LYNCH:

Q. He told whom?

A. Mr. Galloway and myself.

Q. Did you do it?

A. Yes, sir; as quick as I could get a gun.

Q. Did Galloway go?

A. Yes, sir.

Q. How did you go?

A. We came out of the jail yard, and there was a street car just passing and we caught that street car.

Q. Did you go to the bridge?

2109 A. Yes, sir.

Q. What did you find when you got there?

A. Johnson was dead when we got there.

Q. Was that car the most direct way you had of reaching there?

A. The quickest way to get there.

Q. It went across the bridge?

A. Yes, sir.

Q. Did you see any of the people who had executed Johnson, or anybody that you knew had taken part in that, when you got there?

A. No, sir.

Q. You received no information as to who had done it when you got there?

A. No, sir; there was not a great many people standing there. They seemed to be standing around.

Q. Who did you recognize when you got there?

A. I couldn't recall to mind anybody now.

Q. I will ask you whether or not you were excited?

A. I can't say I was excited. Of course I was excited to a certain extent; yes.

Q. How long did you stay there?

A. We didn't stay there a great while.

Q. Where did you go then?

A. We came back to the jail.

Q. I will ask you if you had learned of that mob being at the jail earlier what you would have done?

2110 Mr. SANFORD. I object to that as hypothetical and leading.

The WITNESS. I sure would have been there.

By Mr. LYNCH:

Q. I will ask you if you would have defended the jail and defended the prisoner?

A. Yes, sir.

Q. I will ask you if they had been guarding that jail at night?

A. Not for——

Q. After Johnson was convicted?

A. No, sir; never after that time.

Q. When he was brought back from Knoxville, I will ask if they kept up any guard?

A. No, sir.

Q. For some days before that lynching?

A. No guard had been around the jail from the time he was convicted—from that time on.

Q. I will ask you if you heard anything that indicated any danger to Johnson by leaving him there unguarded?

A. No, sir.

Q. I will ask you if you heard any manifestations of a desire to mob him or lynch him in the community or in the city, or in the county anywhere?

A. I did not.

Q. Did you hear or see or know of anything that affected his safety or indicated danger to this man while he was there in jail, and after he was returned from Knoxville?

2111 A. No, sir; I did not.

Cross-examination by Mr. SANFORD.

Q. Where did you eat your noon meal that day; do you remember?

A. No, sir; I do not.

Q. Where did you eat supper?

A. At my home, 314 Williams street.

Q. In the city or in the suburbs?

A. In the city—South Chattanooga.

Q. Had you heard of the telegram from Washington of the appeal that had been granted?

A. I had heard nothing about no telegram.

Q. Did you hear that the news had come that the Supreme Court had made an order granting Johnson an appeal and stay of execution?

A. I think I saw it in the paper.

Q. Did Captain Shipp tell you anything about it?

A. No, sir.

Q. Did you get any message from Captain Shipp that afternoon, or any time before the lynching, to come to the jail or to be on guard that night?

A. I did not.

Q. Did you get any message from any other deputy, or any word to be on guard at the jail?

A. No, sir.

Q. That night?

A. No, sir.

2112 Q. When was it you first heard of the fact that the Supreme Court had granted this appeal? About what time was it, if you recall?

A. I think it was——

Q. Was it in the afternoon News that you saw it?

A. I think it was about two days before the lynching. I think it was about the 17th of March. I think so, if I am not mistaken.

Q. And you saw that the Supreme Court had granted the appeal. You saw it in the paper. That is your recollection about that?

A. Yes, sir; that is my recollection.

Q. The lynching occurred on Monday, the 19th?

A. Yes, sir.

Q. And you had no word from Capatain Ship in the meantime to be at the jail or to guard the jail or anything of that character?

A. No, sir.

Q. Did Captain Shipp tell you that they had taken Johnson to the bridge? He told you to go to the bridge, as I understand.

A. He told us to go to the bridge, as well as I remember, as quick as we could.

Q. He told you to go to the bridge?

A. Yes, sir.

Q. Do you remember Burk speaking to you as you went up to the jail?

A. I remember his speaking as we passed by; yes, sir.

2113 Q. But you do not remember what he said?

A. No, sir.

Q. You heard him testify here?

A. Yes, sir.

Q. Did he not tell you that Johnson was already lynched?

A. I couldn't say whether he did or not.

Q. Did you not know before you got up there to the jail that Johnson was already lynched?

A. I did not.

Q. You did not?

A. No, sir.

Q. How long were you at the bridge after you went out there?

A. I don't think I stayed there over 10 or 15 minutes.

Q. You did not stay over 10 or 15 minutes?

A. I don't think I did; no, sir.

Q. What effort did you make to get the names of people who had done the lynching?

A. I don't know that I made any, right then.

Q. Did you make any inquiry? You are an officer of the law.

A. There were but very few people there when I got there.

Q. How many people were there?

A. I don't suppose there was over—I should say 75 or 100, probably.

2114 Q. And you were a deputy sheriff, and a lynching had just occurred, and you knew of that fact?

A. Yes, sir.

Q. What effort did you make to ascertain who were the perpetrators of that lynching?

A. I didn't inquire a great deal at that time, there.

Q. Did you inquire at all at that time?

A. I did.

Q. Who did you inquire of?

A. I couldn't remember the name, now, sir.
Q. Do you remember of inquiring of a single person there?
A. I did; yes, sir.
Q. But you can not remember their names?
A. I do not.
Q. How many did you inquire of?
A. Why, I don't know. I inquired around there several times, and could find out nothing.
Q. You tried to get the names of those lynchers?
A. Yes, sir.
Q. Did Matt Galloway do the same thing? Was he inquiring?
A. I don't know what Matt Galloway was doing. We were around in the crowd.
Q. You stayed after he did? He stayed about five minutes, as you heard him testify.
A. No, sir; we came away together.
Q. You think you stayed 15 minutes?
A. I think so.
2115 Q. You think he is mistaken in his recollection that it was about five minutes?
A. It is my recollection that it was about 15 minutes.
Q. He stated it was his recollection that it was about five minutes. You heard him?
A. Yes, sir.
Q. You think that is a mistake?
A. I don't know which is correct. That is my impression, that we were there about 15 minutes.
Q. When did Perkins come away?
A. I don't know anything about it.
Q. He went with you?
A. Yes, sir.
Q. Was he there when you left?
A. I don't know. I walked back Walnut street.
Q. Who with?
A. Matt Galloway.
Q. You and he alone?
A. No, sir; I think there was somebody else along.
Q. Who else was there?
A. I couldn't call the name. I think, if I am not mistaken, there were several walking along.
Q. Did you see Squire Ware out there that night?
A. I couldn't say I did.
Q. Did you ask him who had taken part in the lynching, and if he recognized anybody?
A. I can not say that I saw him at all.
2116 Q. You knew him?
A. Oh, yes.
Q. He was a member of the Eagles, was he not?
A. Yes, sir.

Q. But you do not recollect asking him or speaking to him at all?
A. I don't remember seeing him.
Q. He was a man that you knew very well?
A. Yes, sir.
Q. But you do not recollect seeing him or speaking to him?
A. I don't recollect seeing him.
Q. Or asking him who had taken part in the lynching?
A. I don't recollect seeing him at all.
Q. Do you think you asked him who had taken part in the lynching?
A. I don't recollect seeing him, even.
Q. Who else was at the jail when you got there?
A. I don't remember seeing anybody—you mean when I first went there?
Q. Yes.
A. Captain Shipp is the only one I remember seeing there.
Q. Did you see Jailor Gibson?
A. I don't think I did.
Q. Did you see Judge McReynolds?
A. I don't remember seeing him. I wasn't in the jail a minute.
2117 Q. Did you see Attorney-General Whittaker?
A. I don't remember seeing him.
Q. You do not remember seeing anybody but Captain Shipp?
A. Captain Shipp was just outside of the yard.
Q. Did Captain Shipp take a gun and go with you?
A. I don't know where he went.
Q. Did he go with you?
A. He didn't go with me; no, sir.
Q. Just you and Galloway and Perkins went together?
A. Yes, sir.
Q. You left Captain Shipp standing there. Where did he go?
A. I don't know. I wasn't where he was.
Q. Where did you last see him?
A. I think he was on the walk there at the jail.
Q. What was he doing; standing there or walking?
A. I couldn't tell you. If I remember right he was walking towards the street, though. I passed him in a run, and came back by him in a run. I was not there a minute.
Q. When you last saw him, you do not know what he was doing?
A. No, sir.
Q. You do know, however, that he did not go with you or Galloway or Perkins to the bridge?
A. I didn't see him. There was a good many on the car. He might have got on the car. I didn't see him.
Q. Did you think he did?
2118 A. I don't know. I got on the front end of the car.
Q. Do you not recollect meeting him at the jail when you left; you would have known if he had gotten on the car?

A. He might have caught the car behind me. I was on the front end.

Q. Did you see him out there?

A. No, sir.

Q. Have you any recollection of seeing him, as a matter of fact, after you left him at the jail?

A. No, sir.

Q. Did you speak to Captain Shipp first, or did he speak to you when you went in there? Do you remember?

A. He spoke to me first.

M. J. HORAN, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. LYNCH:

Q. Where do you live?

A. Chattanooga.

Q. Where did you live at the time Ed. Johnson was lynched, last year?

A. I lived at 712 Georgia avenue.

Q. What were you doing at that time? I mean, in what employment were you?

A. I was a salesman for H. Schwartz & Brother.

Q. I will ask you if you heard of the lynching of Ed. Johnson on the night he was lynched?

2119 A. I did not. I did not hear a word about it until I was within 200 feet of the jail. I was down town that whole evening.

Q. I mean did you hear of it after he was lynched, or about the time they were leaving the jail with him?

A. I heard of it, that they were going to lynch him, a few minutes before they came out of the jail.

Q. What did you do?

A. I started to walk up to the jail from the corner of 7th and Walnut, and I saw some of the men coming out, and stopped directly in from of the Title Guarantee Building, a few yards this side of the jail. I waited until the mob came out of the jail and then I went in the jail. As I walked in the door I saw Captin Shipp, and he was very much excited. In fact he was almost in a faint. He was as white as a sheet. I walked up to him, and he just put his hand on my shoulder and he said " My God, they have ruined me."

Mr. SANFORD. I object to the statement of what he said.

Mr. LYNCH. We understand that you object, but I would rather you would not interrupt the witness while he is making his answer.

Mr. SANFORD. I have to object when I know he is going to state hearsay testimony. I object to it on the ground that it is hearsay and entirely incompetent and irrelevant.

By Mr. LYNCH:

Q. Go ahead and tell what Sheriff Shipp said to you
2120 about that time, and describe his condition?

A. I told Sheriff Shipp to sit down, and he started to sit down. Then he jumped back up and he said, "My God, I did everything I could." I said, "I know that, Sheriff." I said, "You are not to blame. You have done everything any man could have done." I said, "No one expected this." He said, "My God, no." I told him to sit down again. I asked him if I could get him a drink, and he shook his head. He said no. I asked him if he thought he was going to faint, with his head hanging over, and I walked out to see if I could get him a drink of water. I didn't see any, and I came back and resumed by conversation with him. I told him no one in the world knew anything about it. He said, "My God, I did not." I told him no one did. I told him I was down on the street, right there at the jail, before I heard or saw anything. So I walked out to the entrance of the jail, and walked down to see where the mob had gone.

Mr. SANFORD. I object to all the statement, just as if the objection was made before the witness' testimony, on the ground that it is a self-serving statement made by the defendant after the occurrence, and as utterly incompetent; and I object to the statement made by the witness as to his statement to the sheriff as entirely incompetent, and as not relevant to anything in the case; and to the whole conversation as incompetent, entirely.

Mr. LYNCH. Our insistence is that the conduct, manner, and
2121 demeanor of the sheriff, and the conversation between him and this man at the time, are part of the res gestae.

By Mr. LYNCH:

Q. You say you asked him if he was about to faint?

A. Yes, sir.

Q. I will ask you if there was anything in his appearance that indicated to you that he was about to faint?

A. Well, he had all the appearances of a man that was ready to collapse. His face was white and he was trembling, just trembling like a leaf; and under those conditions I naturally thought he was going to faint, and suggested that he sit down; and as he sat down he threw his hand down like this, with his head on his hand——

Mr. SANFORD. Let it be understood that the same objection is preserved to all this.

The WITNESS. I tried to quiet him, and tried to get something to relieve him. That was my thought, because I thought the sheriff was going to collapse at that time.

By Mr. LYNCH:

Q. You said he had his hands like this. I wish you would put it in language, and state whether you mean he had his head down in his hands, or what?

A. He dropped his head down like that [indicating].

Q. Down on his hands?

A. Yes, sir, just in that position, down in that shape [indicating].

Mr. PRITCHARD. That does not go in the notes. They are taking the evidence down in writing, and if you describe in words
2122 what you mean, it will go in the notes better than if you just show it.

The WITNESS. He simply placed his hand up to his head and dropped his head over [indicating].

By Mr. LYNCH:

Q. I will ask you whether or not he had tears in his eyes at that time?

A. Yes, sir.

Mr. SANFORD. I object to that as leading and suggestive.

By Mr. LYNCH:

Q. Did he have, or not? Just state it.

A. He did. There was tears in his eyes. I remember it very distinctly.

Q. I will ask you if his voice sounded natural, or was trembling?

A. Trembling. In fact, you could barely understand what he would say. It was just in a tremble. He would tremble and say a little something in a trembling voice, like a voice, the best I can describe it, filled with emotion.

Q. I will ask you about his person, his body. Did he appear stout and vigorous, or as if he was weak and trembling?

A. No, sir; he was weak and trembling. He was just like a man that was ready to collapse. You could almost shove him over. He was just ready to drop.

2123 Cross-examination by Mr. SANFORD:

Q. I suppose you went for a doctor for him, did you?

A. No, sir; I did not.

Q. How old are you, Mr. Moran—is that your name?

A. Horan. I am 28.

Q. How long have you been living here?

A. I have been living in Chattanooga for 28 years. I was born here, and have always called it my home, but I have spent years away from here.

Q. What other business have you been in here besides the one you are in?

A. I have been in the newspaper business.

Q. Any other?

A. That is all, sir; that is, since I was grown. Of course when I was a boy I worked around at different things.

Q. How long have you known Captain Shipp?

A. Well, I have known Captain Shipp—I have known who he was since I was a boy. I have known him since when——I presume I have known him for about ten years, or eight years, or something like that.

Q. Who else was there besides him?

A. I do not remember seeing anyone but Captain Shipp, and afterwards the jailor.

Q. Mr. Gibson?

A. I think that is his name.

Q. The night jailor?

2124 A. Yes, sir.

Q. Do you know Matt Galloway?

A. Yes, sir.

Q. Did you see him there?

A. He was not there at that time; no, sir.

Q. Did you see Fred Frawley? Do you know him?

A. Yes, sir.

Q. Was he there?

A. No, sir.

Q. Did you see Marion Perkins? Do you know him?

A. Yes, sir.

Q. Was he there?

A. He was not there. None of these gentlemen were there when I first went in; that is, I saw them in the jail afterwards the same evening, but not at the time I have described.

Q. How long afterwards did you see them in there?

A. Well, I presume it was perhaps five or ten—about ten minutes after. It was fully ten minutes after, I guess, or more.

Q. It was fully ten minutes after when they came in?

A. When I returned to the jail the second time Mr. Perkins was there, and some other deputy, a red-headed gentleman—auburn haired.

Q. What is his name?

A. I think his name is Taylor.

Q. When did Galloway come in?

2125 A. Mr. Galloway rushed up to the door just a moment after I had entered the second time.

Q. Just a moment after you had entered the second time?

A. Yes, sir.

Q. Did you see Judge McReynolds there?

A. I don't remember seeing Judge McReynolds.

Q. Do you know him?

A. Yes.

Q. Did you see Attorney-General Whitaker?

A. No; I don't remember seeing him.

Q. Did you see anybody else there?

A. Are you referring to my first——

Q. Either the first or the second time you were there?

A. The second time I saw Mr. Frawley, and, I think, Mr. Baker the second time.

Q. You are pretty well acquainted with all of the deputy sheriffs, are you?

A. I am acquainted with them; that is, I know some personally, and some of them by sight.

Q. You saw them all there?

A. Yes, sir.

Q. Did you see anybody else there? Tell us everybody you remember that you saw there.

A. I don't remember seeing anyone else besides those. There were two strange men there, and when Galloway first came he attempted to get back——

Q. I did not ask you what he attempted to do.

2126 A. I was going to tell you about these two men. I don't know who they were, but there were two others there.

Q. You do not know who they were?

A. No, sir.

Redirect examination by Mr. LYNCH:

Q. I will ask you whether or not you were in the United States Army?

A. Yes, sir.

Q. During the Spanish-American war?

A. I was in a volunteer regiment at that time and connected with the United States Army, and looked upon as such; yes, sir.

Q. In what department did you serve?

A. I served in different departments in the Third Tennessee Regiment. We went to the Philippines, and were supposed to be United States Volunteers, just the same as the Regular Army.

Q. Did you go with your regiment to the Philippines and serve through that campaign in the Philippine Islands?

A. Yes, sir.

Q. I will ask you what position you held in your regiment?

A. I was private, corporal, and sergeant. I had charge of the commissaries.

2127 Q. A suggestion is made to me that perhaps you were interrupted about the time the stenographer was trying to get this statement, and I will ask you whether or not we are to understand you as saying that Captain Shipp said to you when you went in to him, "My God, I am ruined."

A. Yes, sir; he made that statement.

Mr. SANFORD. The same objection is reserved to that as heretofore, and also to the question as leading.

Mr. LYNCH. We are about through, with the exception of some character witnesses that we will put on later, and are ready to take up Captain Shipp at 2 o'clock.

Mr. SANFORD. We have half an hour. Why not begin now?

Mr. LYNCH. A conference is necessary with Captain Shipp. On account of sickness in his family we have not had a conference with him, and we think it necessary before he goes on the stand.

Mr. SANFORD. I supposed you had had an opportunity?

Mr. LYNCH. We have not had.

Mr. SANFORD. Can you not get in the character witnesses before afternoon?

Mr. LYNCH. It will probably take the afternon for Captain Shipp's testimony.

Mr. PRITCHARD. The character witnesses that we want to introduce are with respect to the character of the woman, Ellen Baker, and they have to come from where they live.

(A recess, at 11.30 o'clock a. m., was thereupon taken until 2 o'clock p. m.)

2128 AFTER RECESS.

The hearing was resumed at the expiration of the recess.

J. S. BELL, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SHEPHERD:

Q. Mr. Bell, I will ask you to state if you were the foreman of the grand jury in the State Criminal Court at the March term 1906, which investigated the lynching of Ed. Johnson?

A. Yes, sir; I suppose it was the March term. I think it was the May term—I do not know which. It was in the spring of 1906.

Q. It was really a continuation of the January term, was it not?

A. I think so; yes. It was May, I think, when we served.

Q. It ran on until March?

A. Yes, sir.

Q. I will ask you to state whether or not your grand jury made a special investigation of the Ed. Johnson case, or were you called together specially for the investigation of that case?

2129 A. I do not know that we were, especially. We were the regular grand jury at the time, and were charged to investigate it, and did try to do it.

Q. The grand jury was in session when the lynching occurred, was it not; or were you reconvened? How was that?

A. No, I think it was not in session when it occurred. It was afterwards.

Q. And your grand jury was reconvened after the lynching occurred?

A. Yes, sir.

Q. Upon the reconvening of the grand jury, state whether or not——

A. We were not the grand jury at the time it occurred. I think we were called afterwards as a separate jury.

Q. Oh, yes. State whether or not the criminal judge gave a charge with reference to that lynching.

A. Yes, sir.

Mr. SANFORD: I object to that as irrelevant to the issues.

By Mr. SHEPHERD:

Q. (Continuing.) With reference to investigating that lynching?

A. Yes, sir.

Q. What did you do with a view to finding out who participated in that lynching?

A. We summoned quite a number of parties and examined them in order to find out what had occurred.

2130 Q. You even went to the extent of summoning the judge and the attorney-general, both?

A. We summoned the court and the Attorney-General and some other officers, some of the State Guards, and various others that we thought ought to know something about it, and it had somehow come to us that they did know, possibly, something.

Q. I will ask you to state whether you made an earnest and energetic effort to find out who it was who participated in the lynching.

A. Yes, sir.

Mr. SANFORD. I object, as entirely improper and irrelevant to these issues.

Mr. SHEPHERD. Let it go in, subject to your objection.

By Mr. SHEPHERD:

Q. I will ask you to state whether or not you remember calling before your body the night jailor, Jerry Gibson, and interrogating him about the lynching.

A. Yes, sir; as I recall it, Jerry Gibson was there as one of the witnesses.

Q. State whether or not you personally conducted the examination and interrogation of Jerry Gibson.

A. I think I did. I did in a good many of the cases. Sometimes the Assistant Attorney-General did it.

Q. What was his testimony with reference to whether he recognized any of the lynchers there on the night that the lynching occurred?

A. As I recall it, he said that he did not know any of the

2131 mob at all, or anybody that was engaged in the assault.

Q. And you got no testimony that would authorize you to return a true bill against anybody?

A. No, sir; we did not find enough, as we thought, to warrant us in doing anything of the kind.

Q. How long have you lived in Hamilton County?

A. It is my native county. I have lived here the greater part of my life, except when I was absent at school, or on some kind of business.

Q. And you are crowding sixty pretty close now, are you not?

A. Yes, sir.

Cross-examination by Mr. SANFORD:

Q. How many witnesses did you examine before that grand jury in reference to the Ed. Johnson lynching?

A. What witnesses?

Q. Yes.
A. We examined quite a number.
Q. No; I did not ask that. I asked how many?
A. I can not say the exact number, but there must have been some 20 or 30, and I think possibly more.
Q. Did you examine the witnesses or did the Attorney-General or the Assistant Attorney-General examine them?
A. I think we examined them both.
Q. Do you remember as a matter of fact whether you examined Jerry Gibson or whether one of those officers examined him?
2132 A. I couldn't say positively about that, but I think I did.
Q. That is a mere impression, is it not?
A. Yes; I could not say positively that I did examine him. I think I did.
Q. You have not any very distinct recollection as to his testimony, have you?
A. If I did not do it, I was present and heard it.
Q. You have not any very distinct recollection as to his testimony, have you?
A. Yes, sir; I have a distinct recollection that he said he did not know anybody of the mob, or that was engaged in the assault, and so everybody else said. We could not find a single man that knew a single one of the attacking party.
Q. I am not asking you that.
A. That is what Jerry Gibson said.
Q. I only asked your recollection as to what Jerry Gibson said.
A. That is what I understood you to say; yes, sir.
Q. How long ago has that been?
A. That was in the spring of 1906.
Q. About a year ago?
A. Yes, sir.
Q. Over a year ago?
A. Yes, sir; I rather think it was in May that we were there.
Q. How many grand juries did you serve on?
2133 A. On one.
Q. Did you investigate the first attempted lynching?
A. We tried to investigate both attacks; yes, sir.
Q. And you never returned any indictments for that, either?
A. No, sir.
Mr. SHEPHERD. There is one question I forgot to ask, Mr. Sanford.

By Mr. SHEPHERD:

Q. I will ask you to state if Mr. Gibson and the other witnesses who were examined before your grand jury were sworn.
A. Yes, sir.
Mr. SHEPHERD. That is all I have, Mr. Sanford.
The COMMISSIONER. Are there any more witnesses for the defendants?

JOHN BROWNING CAMERON, a witness produced on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. COOKE:

Q. What is your name?
A. John Browning Cameron.
Q. Where do you reside?
A. 113 Peyton street. It is changed now to 213 21st street.
2134 Q. Chattanooga?
A. Yes, sir.
Q. Do you remember the circumstance of the lynching of Ed. Johnson in March, 1906?
A. Yes, sir.
Q. You remember that?
A. Yes, sir.
Q. Are you acquainted with Jerry Gibson?
A. Yes, sir.
Q. Who was the jailor?
A. Yes, sir.
Q. State whether or not you went to see Jerry Gibson at the jail any time about the time of that lynching; and if so, state when.
A. I went the Sunday night previous to the lynching.
Q. You went the Sunday night previous to the lynching?
A. Yes, sir.
Q. Who went with you?
A. David Barr.
Q. Where is he?
A. He is up in our bakery now.
Q. What time of night did you go to see Jerry at the jail?
A. I think it was between 7 and half past 7 o'clock.
Q. Did you find him there?
A. Yes, sir.
Q. And that was, you say, the Sunday night before the
2135 lynching?
A. Yes, sir.
Q. The night before the lynching?
A. The night before the lynching; yes, sir.
Q. Did you find any guard at the jail with Jerry Gibson on that night?
A. No, sir.
Q. Did you go through the jail?
A. Yes, sir.
Q. And you saw no one on guard?
A. No, sir.

Cross-examination by Mr. SANFORD:

Q. What is your business?
A. I am in the meat business and bakery business.

Captain JOSEPH F. SHIPP, produced as a witness on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. CLIFT:

Q. Captain, are you the sheriff of Hamilton County, and were you the sheriff on the night of March 19, 1906?

A. I was, and am the present sheriff.

Q. You are one of the defendants in this case of the United States against yourself and others?

A. I am.

2136 Q. When were you first elected sheriff?

A. I was installed in office on the first day of September, 1904.

Q. And you have been sheriff ever since that day?

A. Yes, sir.

Q. I will ask you, Captain, to state whether or no Ed. Johnson was arrested by you or your forces, and on what charge he was arrested.

A. He was arrested at my instance, by one of my deputies, on the 25th of January, 1906.

Q. State what was done with him immediately after his arrest?

A. Well, as soon as I heard that he had been arrested, apprehending that there would be some trouble, because at that time there was a great deal of excitement, I went immediately to the point where I learned the arrest had been made, and took the man in my buggy and drove rapidly by a circuitous route to the county jail.

Q. You say there was a great deal of excitement at that time?

A. Yes, sir; there was.

Q. Did that excitement grow out of the fact of the crime that had been committed by this man?

A. It did. It had been committed on the night of the 23d.

Q. State what you did then, after that, with the prisoner. Just go on and state in detail what you did in the way of protecting

2137 the prisoner, and the efforts you made for his protection.

A. Well, I had arrested, or had had arrested, the night before, near St. Elmo, a negro by the name of Wyatt, whom the people at St. Elmo believed to be the man who had assaulted Miss Taylor. I was called by the people at St. Elmo to come out there. That was on Wednesday, after the assault on Tuesday night. They related to me that there was a negro that lived in that vicinity whom they suspicioned as being the man, and they gave me his name and told me where he lived. I stated to them——

Mr. SANFORD. I object to this. You do not want that, do you, Major?

Mr. CLIFT. I wanted him to tell about his making the arrest, and that part of it.

Mr. SANFORD. Yes.

The WITNESS. I will go on and relate with reference to Johnson. I put Johnson in jail. It was in the neighborhood of 2 o'clock in the afternoon.

By Mr. CLIFT:

Q. Of the 25th?

A. Of the 25th. After putting him in jail I told my chief deputy, Mr. Frawley, that I wanted him to call a physician, Dr. Ellis, and have the man's person examined, as well as his clothing——

Mr. SANFORD. I object to testimony as to all that, as entirely irrelevant—as to the examination of the prisoner, and matters of that sort.

Mr. CLIFT. Note the objection.

2138 By Mr. CLIFT:

Q. Go ahead, Captain.

A. I then went to the criminal court room and notified Judge Allison, the criminal judge, and Attorney-General Whitaker.

Q. Judge Allison or Judge McReynolds?

A. Judge McReynolds, I should say. The judge was then on the bench, holding court. I asked him to take a recess, and we went into his private room. I stated to them that I had this man in jail, and also another man whom I had arrested the night before, and that there was a great deal of excitement and I anticipated there would be an effort made to mob them, and suggested that the best thing to do would be to remove them from the city and county.

Q. Were they removed from the city, and to what point were they taken?

A. Judge McReynolds issued an order to remove both of the men to some point of safety, leaving it at my discretion as to how and where I should take them. I had intended to leave here on the Knoxville accommodation, but by that time it was too late to catch that train, it leaving here at 4 o'clock. The only train that I could reach Knoxville by was the Cincinnati Southern, by way of Harriman, which was due to leave at 4.45. I returned to the jail and had the prisoners brought out at the back door, in charge of Deputy Sheriff Baker. In the meantime I had gone over to Fountain Square

2139 and was holding the car until he could get there with the prisoners. We then went by the electric car line to Boyce Station, and arrived there just at the time of the arrival of the train. After getting on the train with the two prisoners, Baker, and myself, I was running over in my mind as to whether there was a jail at Harriman. Knowing that there was no jail there I concluded to stop at Dayton, that being the only place on the line between Chattanooga and Dayton by that route where there was a jail.

We reached Dayton about dark. We carried the prisoners, both of them, to the jail and locked them up, and then I immediately went over to the hotel where I could get a long distance telephone and called up Mr. Frawley and notified him to put himself in communication with Judge McReynolds and Attorney-General Whitaker, as I

apprehended there would be a mob there that night and I wanted them to be present that they might inform the mob that these two men had been removed from the county; hoping, with that assurance, that that would quiet the mob.

Before leaving the city I had spoken to Mr. Frawley and to Captain Brown, my day jailor, and requested if the mob should come, which I anticipated it would, that they call upon them for a committee to be appointed, that they might go through the jail and be convinced that these men were not there; but I had not thought before leaving to call his attention to the having of Judge McReynolds and Attorney-General Whitaker, to assure them that they issued this order for the removal of the prisoners.

2140 After we had gotten our supper, we went back to the jail for the purpose of guarding the prisoners during the night. Along about 9 o'clock Dr. Gillespie and some two or three other gentlemen came to the jail and notified us that there was a mob being organized in Dayton take charge of these two men; that the community was quite indignant that we had brought two men charged with rape to the city of Dayton for safe keeping.

We also learned, by telephoning to Sheriff Frazer, of a telephone message from some friend of his, stating that it was known in Chattanooga that these prisoners were then in the Dayton jail, and that the mob at Dayton would probably be joined by parties from Chattanooga, and that we might expect an attack upon the jail at a late hour that night.

I then telephoned to the city—called up Mr. Frawley—who informed me that the assault was then being made upon the jail here, and related to me the details of it as it progressed. I then told him what I had learned about parties likely leaving the city for Dayton, and requested him to send some officers to the Central Depot to see whether anyone got on the train leaving here at about 9.30. We waited there in great suspense, speculating as to what we would do with the prisoners in case we were assaulted, and planning what we would do, until after the train from Chattanooga had arrived. No one got off of the train. I had sent Mr. Baker up to the train to see whether anyone got off. Then Sheriff Frazer said "that if we would have a mob here it would be a Dayton affair, and there

2141 is one man, a very prominent citizen, who will likely lead the mob. He is a very special friend of mine. He is a Mason, and so am I and so are you, and I would suggest that we go and see him and see whether or not we can not get him—if we can not keep the mob from coming to the jail—to give us notice, so that we may get the prisoners away."

We looked him up, and left the jail in charge of Mr. Baker and the night jailer, and went at 2 o'clock and called this gentleman up. He stated to us that he had been conferred with with reference to the mob, and that if he could not keep them from coming he would give us notice in advance, so that we could get the prisoners out of the jail and get them to some place of safety.

Mr. SANFORD. I desire to note an objection to all conversations of the witness with these other parties, and to interpose a general objection to all conversations on that trip, before he gets back to Nashville. I do not want to interrupt the witness every moment.

Mr. CLIFT. That is all right. We will consider the objection as made.

Mr. SANFORD. The ground is that it is hearsay and incompetent and irrelevant to the issues.

Mr. CLIFT. We hardly agree with you on that subject, but let us enter your objection.

The WITNESS. We remained there the balance of the night, and until morning, and I sent Mr. Baker back to the city, for the purpose of looking up evidence in regard to the man Johnson; and I
2142 left with the two prisoners on the early train for Harriman. I got off the train at Harriman Junction and carried the two prisoners over to the town of Harriman. I left them in the mayor's office in charge of an officer and went to the hotel for the purpose of telephoning back to Chattanooga to my chief deputy, Frawley, as in the meantime I had learned through a railroad man that I had been expected in Knoxville the night before and that arrangements had been made to receive me by a mob there.

I called up Mr. Frawley and notified him that I had changed my plan; that I was going by the Tennessee Central to Nashville, and would leave there about 12.40 that day.

Mr. SANFORD. It is understood that my objection covers all conversations with Mr. Frawley, and this entire trip that is being inquired into is objected to as incompetent.

Mr. CLIFT. That is all understood; yes, sir.

The WITNESS. I also requested him to see the Attorney-General and to request that he call the grand jury together, that this man might be indicted, believing that that would have a tendency to allay the excitement that existed at Chattanooga.

I left Harriman about 12.40 for Nashville. The information seemed to have reached all the principal stations along the line that I was coming with two prisoners who were charged with rape, from Chattanooga; and at each of these stations the people would pile into the train, and it was with very great difficulty that I could
2143 keep them from taking the prisoners away from me. I was only able to prevent it by explaining to them that these men had been arrested on that charge; that I did not know whether they were guilty; that I was removing them to some place of safety until I could have an opportunity to investigate the matter; and that would seem to satisfy them and then they would leave the train. But I had that condition at a number of stations all the way down to Nashville.

I reached Nashville at 6.20. Before leaving Harriman, however, in my conference with Mr. Frawley, I requested that he have this young lady and her brother meet me in Nashville, that she might see

these *these* two prisoners before they had lain in jail and undergone any changes, to see whether or not she could identify them.

Mr. SANFORD. I specially note an objection to all testimony in reference to the young lady, and all questions in reference to the guilt or innocence of Ed. Johnson, as having no bearing whatever upon the object of this inquiry.

By Mr. CLIFT:

Q. Just go on with your acts.

A. On my arrival at Nashville I carried the two prisoners to the county jail and then called a cab to drive me to the Nashville & Chattanooga Union Depot, to meet the Nashville train, and to meet Miss Taylor and her brother, whom I expected on that train due to arrive at 6.55.

When I reached the depot I called the sheriff and asked him
2144 to come over and join me at the depot. The Nashville and Chattanooga train arrived on time, and I met Miss Taylor and her brother. We went into the dining room and had lunch. I said to Miss Taylor, "I am going to take you over to the county jail, where I have two prisoners. I want you to see them both and see whether you can identify either of them."

After we had gotten our supper we got in a carriage with the sheriff and drove to the county jail. On the way to the jail I said to Miss Taylor, "What is there that you can remember about the man that assaulted you by which you can identify him?"

Mr. SANFORD. I object and protest against any evidence and conversations with Miss Taylor in reference to the identity of this man as entirely and utterly foreign and irrelevant to this issue and to any question in controversy.

Mr. CLIFT. Of course, we will just consider your objections as in. We understand that.

Mr. SANFORD. I desire to make them very earnestly as to matters that are entirely foreign to any issue in this controversy.

Mr. CLIFT. We hardly agree with you. Go on, Captain.

Mr. SANFORD. It is understood that the objection is kept up to all testimony in reference to Miss Taylor.

Mr. CLIFT. Yes, sir; that is understood, Mr. Attorney-General.

2145 The WITNESS. I went on then to describe the man, stating that he was a colored man, a little taller than she was; that he was dressed in a dark suit of clothes and had on an old soft black hat, and that the coat was cut round-cornered. That filled the description of Johnson. Then she remarked, of her own volition, that he had a very soft, kind voice—so much so that she was surprised that one with a voice like that would have been guilty of such a crime. If she had talked to the man a thousand times she could not have described his voice any more correctly.

Mr. SANFORD. I object to the testimony as to Johnson's voice as entirely foreign and irrelevant.

The WITNESS. That was so characteristic of his voice and his voice was so peculiar that it had been remarked by others who had talked with him on the way to Nashville.

Mr. SANFORD. I object to the testimony of what others had remarked as hearsay in reference to Ed. Johnson's voice.

The WITNESS. When we arrived at the jail I, with the sheriff, carried Miss Taylor and her brother into the sheriff's office. Miss Taylor and her brother were seated, and I notified them that I would retire and bring in these two prisoners; but before bringing them in, notwithstanding that we had an electric light, I had the gas lighted, that we might have a good, strong light.

2146 After bringing the two prisoners in and standing them before her and leading them in conversation, I passed them out of the room, and then returned and said to Miss Taylor, "Which of these men, if either, is the man who assaulted you?"

Mr. SANFORD. My objection is continued to all this testimony, and to the answers that may be given as to what she may have said.

The WITNESS. She said "The man that stood to your left." That was Johnson. Then she remarked, "I never expected that you would be able to bring anyone before me who I could identify with so much satisfaction to myself."

By Mr. CLIFT:

Q. Then what was next done, Captain?

A. I then passed Miss Taylor and her brother out of the room, and I brought in Wyatt, first, into the room in the presence of the sheriff and myself, and we had some talk with him, and then returned him to the officers in the hall, and brought in Johnson. I then confronted Johnson with the strap that I had in my pocket, that I had picked up on the ground at the spot where this young woman was assaulted, and stated to him that the young lady had identified him as the guilty man.

Mr. SANFORD. I make the same objection to all conversations with Ed. Johnson, as utterly and entirely foreign; and we protest against the evidence on that point.

2147 The WITNESS. We then passed Johnson back to the officers in the hall. Johnson took from his finger a large ring and handed it to one of the officers and said to him, "They say I am the guilty man, and I want you to send this ring to my people." I will not be sure whether he said his people or his mother, but to some of his people.

We then left the jail and went to the hotel and remained there during the night. Before leaving I instructed the sheriff to hold these two men, keeping them separated, for further orders.

The next morning I returned with Miss Taylor and her brother to Chattanooga.

By Mr. CLIFT:

Q. Then, after you returned to Chattanooga, state whether or no Johnson was indicted.

A. Yes, sir; he was indicted.

Q. Then was he brought back here after the indictment?

A. He was brought back here after it was determined upon the date of the trial, and as I now remember I arrived here with him on the morning of the 6th of February, as I now remember it. I had left Nashville at 1 o'clock the night before—at 2 o'clock—and arrived here early in the morning and carried him immediately to the county court-house.

In the meantime I had arranged for the court-house to be heavily guarded, both by the police and deputy sheriffs. He was carried direct to the court-house where the trial was to be held, and was to begin that day, that morning.

2148 Q. Now, Captain, state whether he was put on trial that day or the day following?

A. He was put on trial that day, and Judge McReynolds had issued an order that guards should be kept at the entrance to the criminal court room to keep out any crowd that might interfere with the progress of the trial or jeopardize the life of the prisoner. That was done, and the trial progressed.

Q. State who, if anyone, was appointed to defend Johnson during the trial, and how the trial was conducted.

A. I do not think there ever was a prisoner that was so well defended, and by more able lawyers.

Mr. SANFORD. I object to all testimony that may be called for by this question, and to all evidence that may be given, if I may make one objection in advance, relating to the conduct of the trial, so far as it affects the question of the guilt or innocence of Johnson, as a matter foreign to any issue in the present case. I desire to make that objection to all testimony that may be given on that point.

The WITNESS. The court had appointed Judge Shepherd, W. G. M. Thomas, and Robert Cameron to defend the prisoner.

By Mr. CLIFT:

Q. Now state, Captain, what information, if any, you gave to these attorneys, so as to enable them to see what line of defense could be adopted to the greatest advantage of the prisoner, for his protection.

Mr. SANFORD. I object to that as incompetent and im-

2149 material.

The WITNESS. A conference was held, as it was apprehended that when the prisoner was brought back, or was en route back to Chattanooga, that he might be mobbed. It was the great anxiety of the criminal judge, the attorney-general, and the defendant's attorneys, as well as myself, that the man should be tried and that the law should be upheld.

A conference was held, and a good many suggestions were made with reference to how the prisoner should be brought back safely and protected during the trial, and it was suggested that I go to Nashville and call upon the governor for two companies of militia,

that they might accompany me back with this prisoner to secure his safety and to assist in protecting him during the progress of the trial. Johnson's three attorneys were there, the criminal judge and the attorney-general, the Rev. Dr. Bachman, and the mayor of the city, all of whom were very much interested in seeing that the man
2150 was protected and that the law was upheld. I said to them that I would undertake to bring this man back myself individually; that if the militia was called for I could not control them, and the chances were there might be a lot of people killed, and that I would undertake to bring the man in safety, and I believed I could do it, and not only protect the prisoner but protect the community.

Mr. SANFORD. I object to that statement specifically as entirely incompetent, inadmissible, and hearsay.

By Mr. CLIFT:

Q. Did you bring the prisoner back in safety?

A. Yes, sir. I left the city without letting anyone know, not even my own officers, of my leaving, and went to Nashville, taking the precaution there to get off in the yard and not go through the union depot, and to go direct to the jail, and remained there until 2 o'clock at night. I took the prisoner in a hack and drove to the depot, entering the train through the baggage room—taking all those precautions for the protection of the prisoner—and arrived here the next morning at 6 o'clock, taking the prisoner off at King street, where I was met by the police authorities with the patrol wagon and deputy sheriffs, and driven rapidly to the county court-house, where I found the police and the deputy sheriffs already on guard according to the arranged plan.

Q. Now, Captain, state whether or no, after Johnson was tried and convicted, the excitement in this vicinity and neighborhood was allayed?

2151 A. Well, I will state that after the first day of the trial I could see very plainly that we had done the community an injustice in regard to the amount of excitement and disposition on the part of the community to interfere with the law; and then it was that we relaxed the guard about the court-house and about the grounds. While there was a great deal of interest in the trial, there was no manifest disposition as far as I could see—and I was mixing with the people for the purpose of finding out—to take the law into their own hands. We kept a guard on the jail during the nights while the trial was in progress, and about the court-house, although we relaxed the guard about the court-house and let the people come in and out during the trial, so that there would not be so many as to disturb the progress of the trial.

Q. What was done with the prisoner after his conviction?

A. After he was convicted by the jury he was then sentenced by the judge to be hung on the 13th of March. At that time I had two other prisoners in jail, both of whom I had carried away from the city on account of the threatening conditions and threats against

them, namely, Ed. Smith and Floyd Westfield. They were all here at that time. I am not sure whether Westfield had been tried or not; I rather think he had. I know that I had a conference with Judge McReynolds and Attorney-General Whittaker after Johnson was sentenced, and we discussed the advisability of taking him away.

2152 Mr. SANFORD. I object to all evidence as to conversations with the judge and the attorney-general, and any testimony as to what was said, as incompetent and irrelevant.

The WITNESS. I stated to the judge and the attorney-general that I did not believe (and they concurred in it) that there was any danger to those prisoners at that time. The mob spirit seemed to have subsided. It reminded me a good deal, your honor, of the progress of the taking of this proof. When we began, the court-room was too small for the crowd, and for the last week or ten days there have only been a very few people here. That was the way with the mob. After the first excitement it subsided and everyone lost interest in it. But I had been on a great strain beginning with the 11th of December, at the time Ed. Smith had been arrested for assaulting a young girl over in the Orphans' Home. That was on the 11th of December. I thought it necessary to remove him, and did so; and he was carried to Knoxville. On Christmas eve night Floyd Westfield killed an officer at Chickamauga, near this city, by the name of Raines. There was great excitement, and we were putting forth every possible effort for the capture of the man. I made a number of trips through the country.

Mr. SANFORD. I object to evidence as to what the witness did in reference to the capture or arrest of other prisoners in December as matters entirely foreign to any issues in this case.

2153 The WITNESS. The man was finally arrested, and was carried—he and the man that was with him, a man by the name of Carson—to Knoxville. Following that was the assault upon Miss Taylor on the 23d of January. The result was that when, with all of this pressure, we reached the 9th of February, when Johnson was sentenced, I felt that I wanted rest, and I wanted these men out of the city in some place of safety. Although I did not consider that there was any danger, still I wanted to be able to go home and lie down and get a night's rest, which I had not had scarcely for 60 days, free from embarrassment and anxiety. So on the 9th of February I carried the three men—Johnson, Westfield, and Smith—to the jail at Knoxville. After that time, as far as I could see, there was no manifestation of mob violence.

By Mr. CLIFT:

Q. State, Captain, when the guards were removed from the jail.

A. We had no guard at the jail after the removal of these three prisoners on the 9th of February to Knoxville, until after Ed. Johnson was lynched. The night that he was lynched there was a man murdered in the southern portion of the city, and we arrested a man

by the name of Wilson on that charge, the charge of the murder of this man. Some of you can give the name of the man; I do not now recall it. I knew the man very well. He lived on Rossville avenue. His father was a grocery merchant up there.

2154 Mr. SANFORD. I object to going into the question of crimes committed after the lynching.

By Mr. CLIFT:

Q. It was Edgemond, was it not?

A. Edgemond. We did have guards for a few nights after Edgemond was murdered, because it was reported that there would be an effort made to arrest or to take this nigger, Wilson, who was charged with that murder, away from the jail. We had guards then. I merely mention this to show that some of the witnesses have gotten these various dates and times confused. That was the next time, and the only time that we had any guards after Johnson was carried to Knoxville on the 9th of February.

Q. State what time he was brought back from Knoxville.

A. The habeas corpus proceedings before Judge Clark's court (and at that time Johnson was in Knoxville) were on the 10th of March—Saturday, the 10th of March. We went into the trial about 2 o'clock on Saturday and finished about 12 o'clock Saturday night, when the prisoner was placed back in my charge. We remained there that night. I learned that night that a Times reporter had sent quite an inflammatory report about what had been done with Johnson, and the appeal to the Supreme Court of the United States. I became apprehensive that that would arouse excitement in Chattanooga. I called up Mr. Frawley about 12 o'clock at night and notified him what I had heard that might appear in Sunday morning's paper, and

2155 fearing that there would be some effort made to interfere with this man on my arrival here, I notified him to have the deputies go to the central depot. I did not intend to bring the man to the central depot, but I thought that by having the deputies go there, if there was any disposition on the part of the community to interfere with him, that they would conclude that it would be at the central depot, seeing the deputies go there. I left the train with the prisoner and Mr. Mitpayne, who was a passenger on the train, out at the city waterworks, and had the prisoner in the county jail before the people at the central depot knew that the man was here.

Q. Now, Captain, state what you found as to the condition after you reached Chattanooga, and whether there was any excitement?

A. Soon after I arrived at the jail the deputies returned to the jail from the depot and reported to me the conditions out there. They said there was no excitement and no crowd.

Mr. SANFORD. I object to statements of reports that were made, as hearsay.

The WITNESS. We kept watch upon the public sentiment for several days, and, as far as we could see, there was no excitement and no disposition to interfere with the law. That was on Sunday morning,

the 11th of March. Reference has been made to a campaign that I was conducting at that time, and this man was to be hung on the 13th, and I remained in the city. I did some canvassing during
2156 the time, and I was around in the manufacturing establishments, and I found no excitement and heard no talk of a mob during that time. Judge Clark had respited the man for ten days, dating from the 10th of March, which, had there been no interference on the part of the Supreme Court, would have made the man due to have been hung on the 20th of March, and Judge McReynolds and Attorney-General Whittaker got the governor to respite him from the same concurrent number of days that Judge Clark had respited him for.

By Mr. CLIFT:

Q. State whether or no, during that ten days and on up to the very time that the mob made its appearance at the jail, there was any excitement or anything that you discovered that could put a prudent and careful man on his guard, or any notice that there would be an attempt that night to lynch Johnson.

A. There was nothing at all—not a thing that came to my knowledge.

Q. I will ask you to state whether or no you conspired with your deputies, or any one of them, or anyone else, looking towards the lynching of Ed. Johnson?

A. I never conspired with any living man, my deputies or anyone else; and I had no knowledge, not the slightest, that there would be any effort upon the part of anybody to interfere with Johnson.

Q. State whether or no, if you had suspected or if you had
2157 seen or realized that there was going to be any effort or any attempt at mobbing the prisoner, what course you would have pursued for his protection.

Mr. SANDFORD. I object to the question as calling for a purely hypothetical answer as to what the witness might have done.

A. I should have certainly done as I had done before, endeavored to protect him.

By Mr. CLIFT:

Q. State whether or no the order of Judge Harlan granting the appeal, or afterward the order of the United States Supreme Court granting the appeal, in your opinion had anything to do with causing or bringing about the lynching of Johnson?

A. I do not know what was in the minds of the people who did the lynching. I know that it had not occurred to me that anybody would interfere with an order of the United States Supreme Court.

Q. I will ask you to state whether or no you have always, and did at that time, regard and hold the Supreme Court and its authority as of the highest and entitled to the greatest respect, and whether you intended in any way to hold its action in contempt?

A. I certainly had not done anything to bring myself into contempt of the Supreme Court, and had always held the court in the highest respect.

Q. State whether or no it has always been your purpose to uphold and maintain law and order as a good citizen.

2158 A. Yes, sir; I am opposed to mob violence. I am in favor of upholding the law as the best security for the public.

Q. I will ask you, Captain, if you remember Julia Wofford and her testimony here in regard to the conversation she says she heard at your dinner table, and whether any such conversation as that took place?

A. Yes, I heard her testimony. I know Julia Wofford. She was a domestic in my family, and was in my son-in-law's family before she was in mine. She had a very vicious disposition, although a very excellent cook. We tolerated a good deal of her disposition, which was not very amiable, on account of the fact that she was a good cook. But there was no such conversation. The truth was that on account of the fact that my wife was very much worried and in constant dread of all of this trouble and excitement that we have passed through, to relieve her of everything in connection with the matter, I scrupulously avoid talking of it and speaking of it in my family; and if I had anticipated anything, she was the last person on earth that I would have related it to.

Q. Captain, I will ask you to state who your deputies were at the time the lynching took place?

A. M. L. Galloway, Charlie Baker, Marion Perkins, Frank Jones, George Kirkland, John and Joe Shipp, two of my cons; Fred Frawley was my office man. He was not doing deputy sheriff work except in the office.

2159 Q. I will ask you to state whether or not Joe Clark was engaged and acting as deputy at the time this lynching took place.

A. Joe Clark had been a deputy appointed early in my first administration; but on the 16th of December, 1905, he resigned and returned to his former business, which was the grocery business, conducted at Sherman Heights.

Q. I will ask you when you first heard or knew that there was a mob at the jail the night this lynching took place.

A. Well, I had gone home that night, I think, about half past 6. My office work had been greatly interfered with; the criminal court was in session; I was making preparations to hang this man the next day, and I had a campaign on hand at the same time, and my office work had been greatly interfered with. I had carried home with me that night some work—some writing—and I was seated at a table when the telephone bell rang. I went to the phone and I recognized Attorney-General Whittaker's voice. He wanted to know if I knew what was going on at the jail. I told him I did not. "Well," he said, "you had better get down there."

Q. Then what did you do?

A. I hung up the telephone just as quickly as I could, so that I might get another connection. I wanted to call the jail. I then tried to get the jail immediately after disconnecting with him, and I could not get the jail. I at once anticipated what was the matter as
2160 soon as I did not get an answer. I got the central, but I did not get the office, and I anticipated that if there was a mob there the telephone had been torn out. I hung the telephone receiver up at once, rushed around the room and got my hat and coat, and started for the jail, running most of the way and walking rapidly the balance of the way, going down Georgia avenue to 6th street, and by 6th street to Walnut street, and to the jail. Just as I got opposite the jail and just before turning into the walk leading me up to the office, I saw five or six men standing out in the middle of the street; and without stopping, going rapidly, I made the remark, "What is the matter?" No one answered at all, and I then went up the walk and found quite a number of men in the walk and on the steps leading into the office. I made my way through the crowd, shoving them to one side, and got into the office. As soon as I got in I saw that the iron door, the outside door, was open. I entered rapidly, and just as I reached the inside of the door I saw Mr. Gibson sitting back against the wall with three or four men standing around him. I had started over to make some inquiry of him, and just at that time I was seized from behind by several men—I do not know how many. When they seized me I did not know but what they were going to do me some violence, and I reached back for my gun which I had in my pocket. They assured me that they did not intend to hurt me. I was somewhat indignant, and stated to them that I was not afraid of their hurting me. They rushed me up the steps
2161 and carried me into a hallway that is above the level of the floor Johnson was on, and through which there is a drag that we feed the prisoners by, and stood over me there with a guard during the progress of the work. They were hammering; I heard them hammering on the door when I entered the office.

Q. State whether or no you were kept a prisoner there by these people till after they had got Johnson and left the jail with him.

A. Yes, sir; I was.

Q. I will ask you if when you reached the jail you were exhausted from your run, and what the distance is from your house to the jail.

A. Well, it is four or five blocks. Yes, sir; I was very much exhausted. I had been under the care of a physician. I had been suffering with intestinal indigestion and was under the treatment of Dr. Ellis at that time.

Q. State whether or no you were so much exhausted from your run and the sickness and your long strain with regard to watching this prisoner and taking care of him that you were not able to make much resistance at first when you reached the jail.

Mr. SANFORD. I object to that question as leading and suggestive to the witness.

A. Well, I was not able to have made any great physical resistance.

By Mr. CLIFT:

Q. I will ask you, Captain, what your age is.

2162 A. I will be 63 at my next birthday, which will be the 3rd of February.

Q. How long have you lived in Chattanooga?

A. I have lived here about 34 years. I came here in 1874. I became interested in 1873, but came to live in 1874.

Q. What business were you engaged in?

A. I came here to engage in the manufacturing business, which I continued in up to 1891, I think it was.

Q. Then what after that?

A. After that I conducted a hotel, and very soon after that I was broken up.

Q. State whether or no after that you were engaged with the United States troops?

A. Yes, sir; I was a civilian employee, you might say. I was connected with the quartermaster's department during the Spanish-American war and during the entire time that the troops were quartered at Chickamauga Park.

Q. State whether or no you were at one time in the Confederate army, and how long you served there.

A. I entered the Confederate army on the 12th day of April, 1861, and served through the war.

Q. What position, if any, do you hold in the Confederate Veterans' Association now?

A. I am the quartermaster-general of the entire organization, and have been since it was organized in 1889; first on General Gordon's staff, and now on General Stephen D. Lee's staff as quarter-

2163 master-general of the organization—some 1,600 associations.

Q. What organizations and lodges do you belong to?

A. I have been a Mason for forty-odd years, I belong to the Knights of Pythias, I am an Odd Fellow, I am a Red Man, I belong to the Benevolent and Protective Order of Elks, and I am a member of N. B. Forrest Camp, United Confederate Veterans. I forgot to mention that I am also a member of the Georgia Society, of which my friend Chamlee has reminded me. I am also one of the trustees of the Soldiers' Home, and have been since it was organized some 16 or 17 years ago.

Q. Have you held any other official position in Hamilton County except that of sheriff; and if so, what?

A. I served one term as tax assessor, and am serving my second term now as sheriff.

Cross-examination by Mr. SANFORD:

Q. How long have you lived in Chattanooga, Captain?

A. Well, I came here in 1874. It is about 33 or 34 years.

Q. You have a pretty wide acquaintance?

A. Yes, sir; I am pretty well acquainted in Chattanooga. Our city is growing so rapidly, of course, we have many newcomers that I am not acquainted with, but all the old-time people I know.

Q. You are as well acquainted as any old resident of the city probably is?

2164 A. Yes, sir.

Q. You were sheriff at the time of the lynching?

A. Yes, sir.

Q. You were a candidate for reelection; at least there was a Democratic primary——

Mr. SANFORD. I do not mean to ask which party, but I believe it is already in evidence that there was?

Mr. CLIFT. Yes, sir.

Mr. SANFORD. I did not mean to have any political question.

By Mr. SANFORD:

Q. You were a candidate at the primary?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. When was that primary to be held?

A. As I now remember it, the primary was held either on the 28th or 29th of March.

Q. How long had that primary canvass been running at the time of the lynching?

A. Well, I can not say exactly, but I think the canvass had been on about 60 days, possibly. That is about the length of time they usually take.

Q. You have been present almost continuously, Captain, have you not, during the hearing of this matter?

A. Yes, sir; I have been here the greater part of the time.

2165 Q. Did you at any time ever belong to the Order of Eagles that has been referred to in this investigation?

A. No, sir; I never did.

Q. Did either of your sons, or do they now?

A. I think—I am not sure about that, but I think one of my sons does.

Q. Did he belong at the time of this lynching?

A. I could not tell you; I do not know. I am not a member myself and I do not know.

Q. And you never have been, as I understand it?

A. No, sir.

Q. You know where its club room is, do you not?

A. Yes, sir.

Q. And you knew at the time where it was?

A. No; I never was in it. Yes; I will take that back. I had been there one night at an entertainment.

Q. You knew that several of your deputies belonged to it at that time?

A. Yes, sir; I did.

Q. Captain, did you read in the Chattanooga Times, the morning after Johnson had been sentenced, the W. G. M. Thomas statement that has been referred to several times here?

A. I do not remember.

Q. I will show you that article [exhibiting article to the witness]. This is the issue of the Chattanooga Times of Saturday, February 10th, 1906, on page 5, the article headed "W. G. M. Thomas tells why case will not be appealed." Did you read that?

2166 A. I think I did.

Mr. SANFORD. I offer that article in evidence.

Mr. CLIFT. To which we object because it is incompetent and irrelevant and has nothing to do with this case. It is merely a newspaper statement that certainly cannot be made evidence in the case.

Mr. SANFORD. Can the stenographer just take the file and copy that in as if it were read?

Mr. CLIFT. Yes.

Mr. PRITCHARD. For what purpose do you offer it?

Mr. SANFORD. I do not know that I am required to state that, Mr. Pritchard. I offer it generally for whatever it may be worth.

Mr. PRITCHARD. If it is offered as a declaration of Mr. Thomas it is manifestly inadmissible, first, because there is no proof that Mr. Thomas made it; secondly, if he had made it it would be hearsay of the very worst character. It is offered as a mere printed statement without proof that Mr. Thomas wrote it, is inadmissible until it has been proved. As a publication in a newspaper it is inadmissible because it has not been proved that this witness read it.

(The above-mentioned article is in the words and figures following, to wit:)

2167 (Ex. Shipp Cross Ex. No. 1.)

W. G. M. Thomas tells why case will not be appealed.

To the people of Chattanooga:

I can not leave my fellow-citizens in ignorance of what occurred on yesterday. If any lawyer for a prisoner and any twelve jurors trying a prisoner should have the sympathy of the people, that sympathy should be freely given to the jurors and the defendant's attorneys in this case. What we have suffered, the mental strain we have been under, the weight of the burden of the responsibility upon us can not be told. The horror and awfulness of the last few days are things I hope never again to be called on to endure.

When the jury brought in a verdict of guilty, we, as the attorneys, had to settle the question whether the case would be appealed to the Supreme Court. I felt that we should not bear that responsibility alone, and I went to Judge McReynolds and asked him to appoint three other lawyers to meet with Judge Shephard, Mr. Cameron, and myself and counsel, and advise with us and help to share with us the

responsibility. Judge McReynolds granted my request and appointed Messrs. Foster V. Brown, Robert Pritchard, and J. H. Cantrell, and said to me that those three gentlemen would meet us at the office of Garvin & Cantrell at 1.30 o'clock yesterday afternoon. We all met at that hour and we were in consultation until 3 o'clock. The case was reviewed, and our duty and the rights of the defendant were discussed. The most careful reflection was given to the horrible crime charged against the defendant, and the fact that a jury had,
2168 upon their oath, fixed that crime on the accused man. We discussed the recent mob uprising and the state of unrest in the community. It was the judgment of all present that the life of the defendant, even if the wrong man, could not be saved; that an appeal would so inflame the public that the jail would be attacked and perhaps other prisoners executed by violence. In the opinion of all of us a case was presented where the defendant, now that he had been convicted by a jury, must die by the judgment of the law, or else, if his case were appealed, he would die by the act of an uprising of the people.

We discussed the trial, and it was agreed by all that it was quiet and orderly and fair according to the forms of the law, and that no error had been made in the charge or in admitting or excluding evidence. All were agreed that the jury was one of the best which ever sat in our court-house. Messrs. Brown, Pritchard, and Cantrell agreed that Judge Shepherd, Mr. Cameron, and I had performed our full duty in our disagreeable task, and that if a mistake were made, and the defendant were not the right man, the mistake was not chargeable to us and the responsibility not on us. In view of all the conditions, it was the unanimous vote that the law ought to be allowed to take its course if Judge McReynolds were satisfied with the verdict and if he were to approve it and pass judgment of death on it.

It was suggested that we ought to go to the jail and see the prisoner and lay the facts before him, and if he demanded an appeal,
2169 then he ought to have that right under the law. Judge Shepherd, Mr. Cameron, and I went to the jail and spent a half hour with the man. We asked him if he felt that we had performed out duty in his defense, and he answered that he did not know what more we could have done for him. I said: "Ed, we don't know whether you are the guilty man or not; but you and God knows. The jury says you are the man." His reply was: "Yes, they have put it on me, and I guess I have to take it, but I ain't guilty." I then said to him: "Ed, your life has been saved up to this time, but the people believe now that the jury have acted more than they ever did before; that you are the right man. They are outraged against you, and even if you are innocent, as you say you are, we do not believe that we can save your life." Judge Shepherd explained to him his right of appeal; that the Supreme Court met in September next; that an appeal would stay the judgment until that time; that we did not see any reasonable ground to suppose that the supreme court would

reverse the sentence, and that we feared an appeal would cause mob violence against him. I asked him if he had ever heard the story of "Old dog Tray," and he said he had. I told him that old dog Tray lost his life because he was found in bad company, and I said: "Ed, the Last Chance saloon is bad company. If you are an innocent man, you, like old dog Tray, were found in bad company. Old dog Tray lost his life on that account, and it looks like you must lose your life on the same account. The jury would not believe your bad company.

If you die, Ed, and you are innocent, your bad company will
2170 be the thing that kills you, because the jury refused to believe anything they said."

Without giving all that occurred at the jail, he said to us that he did not want to die by a mob; that he would do as we thought best. He said he would go over to the court-house and tell the judge that he did not have anything more to say than that he was not the guilty man.

I want the people to know that the foregoing facts moved us to allow the law to take its course under the verdict of the jury and the judgment of Judge McReynolds. Six lawyers settled it in this way after the calmest reflection and under the keenest sense of the great responsibility.

In view of the awfulness of the crime committed, I beg that the sheriff and every peace officer of Chattanooga and Hamilton county will still try to get all possible further light, and if any person anywhere knows anything whatever tending to show or reflect light on either the guilt or innocence of the defendant, I beg that such person make known all that he may know to us or to Attorney-General Whitaker.

W. G. M. THOMAS.

2171 By Mr. SANFORD:

Q. You, then, took Johnson, Smith and Westfield to Knoxville?

A. Yes, sir.

Q. You went on Saturday, the 10th, or on the 9th? Did you go the evening of the 9th, the evening that he was sentenced?

A. Yes, sir; I went that same day he was sentenced.

Q. And you returned, yourself, to Chattanooga the next day?

A. I do not now remember whether I came back the next day or came back that night. I left here at 4 o'clock. I could have gotten back at a late hour that night, but I do not think—no, I remember now that I did not leave Knoxville until the next morning.

Q. And you got to Chattanooga some time Saturday afternoon?

A. I do not recall the day of the week.

Q. You had an interview with a reporter of the Chattanooga Times after you got back, did you not, and it was published in the Chattanooga Times the next morning, Sunday, was it not?

A. Well, I do not remember about that.

Q. And you told that reporter, did you not, that you were much gratified, or were gratified from the fact that so many of Chattanooga's best citizens had commended your course, and that you had been especially commended for taking the prisoners in dan-
2172 ger of violence to other places for safe keeping. You told the reporter that, did you not, Captain?

A. I have no recollection of it.

Q. Do you deny that you told him that?

A. I do not deny it; no, sir; but I have no recollection of it.

Q. Did you not also state to him in that interview that you had taken the three prisoners away as much as a protection to the people here, by removing the occasion of violence, as for the protection of the helpless negroes in your charge? Did you not also make that statement?

A. I do not know that I made it to the Chattanooga Times. I have made that statement.

Q. You have made that statement?

A. Yes, sir.

Q. How long was it, Captain, before Johnson came back to Chattanooga after that time? Was it after the habeas corpus proceedings?

A. Yes, sir. He remained in Knoxville until after the habeas corpus proceedings. He was brought back here on Sunday morning, the 11th of March.

Q. You were in the court room when Mr. Thomas announced that there would be no appeal in the Ed. Johnson case, I suppose?

A. I was in the court room when Johnson was sentenced.

Q. And when the question of whether there would be an appeal or not came up?

2173 A. I do not remember about that. I was present in Judge McReynolds' private office when Mr. Thomas requested these three lawyers as additional counsel to aid them in determining whether or not they should appeal the case.

Q. You knew that they had called in three other lawyers?

A. Yes, sir.

Q. They were all white lawyers, were they not?

A. Yes, sir.

Q. There was a great deal of race feeling in this community at that time, that all these matters had engendered, was there not?

A. Well, yes, sir; I would say that there was some race feeling.

Q. Unusual?

A. Yes, more than ordinary.

Q. And you knew that these three attorneys and three other attorneys called in consultation had decided not to appeal and had taken no appeal for Ed. Johnson? You knew that fact?

A. Well, it was not a part of my business and therefore I did not keep up with what was being done along those lines. I had other duties to perform which were about all I could take care of, and I was not keeping up with the various phases of the Johnson trial.

Q. Did you understand that Johnson's case had been appealed by his attorneys? You have spoken of the able defense they made
2174 of his case, that "No one was ever more ably defended," I believe was your language.

A. Yes, sir.

Q. Did you understand that part of that defense consisted in appealing his case or not?

A. No; I had reference to the defense before the jury.

Q. Do you mean that you did not know whether or not they had appealed it, or that you do not now recollect it?

A. Well, I do not know that I understand exactly what you have reference to about the appeal.

Q. I want to make my question perfectly plain, of course. It is this: Did you know at the time that his lawyers and the other three lawyers called in conference as the result of the request to Judge McReynolds about which you have spoken, had determined not to appeal his case?

A. I did know that fact; yes, sir.

Q. That is what I meant.

A. Yes, sir; I knew that.

Q. Then did you not know a few days later that a negro lawyer of this city had appeared before Judge McReynolds and had attempted to make a motion for a new trial, or in some way to take the case to the state supreme court?

A. I remember to have heard of it.

Q. You remember that?

A. Yes, sir.

2175 Q. And did you not hear, as part of what you heard, that in those remarks he had reflected upon the white lawyers who had previously been in the case, as having abandoned their client?

A. No, sir; I do not remember to have heard anything about that.

Q. You do not remember to have heard about that?

A. No.

Q. Did you not read the newspaper account the next day of the transactions in court?

A. I do not remember to have read it; I do not remember to have seen it. I do not remember to have heard it.

Q. Then you knew that these same lawyers who had come into the case—Parden and Hutchins—had filed a petition for a writ of habeas corpus before Judge Clark? You knew that fact?

A. Yes, sir; I was notified of that officially.

Q. Then you went to Knoxville when that matter was heard before Judge Clark?

A. Yes, sir; I was present.

Q. You were present during the whole proceedings, were you not?

A. Yes, sir.

Q. You heard the testimony that was given in the case?

A. Well, I heard quite a good deal of it, although at the
2176 time the trial was going on I had Johnson in my charge and we were seated in an adjoining room. I did not get all of the testimony. I heard part of it.

Q. You had a deputy with you, did you not, Captain?

A. No, sir; I had no deputy at all.

Q. How about the jailers up there, or the United States marshal?

A. The marshal, I think I asked on a few occasions to remain with him during my absence.

Q. I will ask you if you heard Mr. Foster V. Brown of this city testify?

A. I remember he did testify, but I do not remember what he testified.

Q. Refreshing your recollection, I read from the transcript of the record in the Supreme Court of the United States in the case of Ed. Johnson, appellant, against the State of Tennessee, and I ask you if on that hearing before Judge Clark at Knoxville, you did not hear Mr. Foster V. Brown—who was one of the three lawyers that were called in conference, was he not?

A. Yes, sir.

Q. (Continuing.) Testify in reference to that conference, and on that point make this statement, among other things: "Mr. Robert Pritchard"—who is one of your counsel in this case, and was also one of the counsel that were called in consultation?

A. Yes, sir; he was.

Q. Did you hear him make this statement:

2177 "Mr. Pritchard made the statement, as I recall it—and I will try to state it correctly—I think he had seen some man on the car that morning as he came in, or sometime during the day, who he said was a good citizen and who we would say was a good citizen if he would give us his name, but he did not give us his name—who said he was opposed to mob violence, but that if Johnson took an appeal that he himself would head a mob to lynch him. That is one statement he made."

Mr. CLIFT. We object to that, if the court please, because of the fact that it is entirely incompetent, irrelevant, and has no application at all to any issue that is involved in this case, and is a matter that should not be put in the record, as it certainly has no application to any issue in the case.

By Mr. SANFORD:

Q. I repeat the question, Captain.

A. I have no recollection of having heard the testimony of Mr. Brown. As I stated before, I was with the prisoner the most of the time in an adjoining room. I went in when Judge Clark delivered his opinion, and heard that, and that is the principal part of that trial that I heard.

Q. I asked you if you did not hear Mr. W. G. M. Thomas testify in that case, and hear him testify, among other things, as follows, re-

ferring to Mr. Cantrell—who was also one of the consulting attorneys in that matter, was he not?

A. Yes, sir.

2178 Q. "Mr. Cantrell stated it in this way, as I remember, that he had heard at least twenty-five men that morning say that an appeal would mean the lynching of this defendant"—referring to Ed. Johnson.

Mr. CLIFT. We object on the same ground as before.

By Mr. SANFORD:

Q. Did you not hear that statement made?

A. No, sir; I did not.

Q. You took your pistol with you when you went to the jail that night?

A. Yes, sir; I did.

Q. You saw five or six men in the street, as I understand, before you got into the jail?

A. Yes, sir.

Q. Do you know who those men were?

A. No, sir; I could not have recognized them from the distance that I was from them, even if I had known them.

Q. You saw a number of other men on the sidewalk, or on each side of the walk going up to the jail door, as I understand you. I may not have gotten that correct.

A. I saw no one on the sidewalk, and no men at all except these men in the street, until I got up on the yard walk.

Q. When I said "sidewalk" I meant the yard walk. Were they on each side of the yard walk?

A. They were in the walk, and the walk was full of men.

2179 Q. The men that you pushed your way through, as I understand.

A. Yes, sir.

Q. How many men would you say were there, Captain, in that crowd that you pushed through?

A. Well, I would think that there were 12 or 15 men.

Q. And about five you remember on the outside?

A. Yes; I think there was.

Q. Did you recognize any of those men in that 12 or 15 bunch?

A. No, sir; I did not, and did not speak to anybody at all.

Q. Did you summon any posse as you went in?

A. No, sir; I did not.

Q. Did you send anybody down in search of any of your deputies or in search of the police?

A. Well, at what time?

Q. As you were going in there?

A. No, sir; I did not.

Q. I forgot to ask you one thing. When did you first learn of the action of the Supreme Court?

A. I do not think that—I may have read it in the paper, yet I have no recollection of reading it in the paper.

Q. To which paper do you refer, Captain?

A. I refer to the morning paper of the 19th.

Q. Did you read it in the evening paper of the 19th?

A. No, sir; I did not.

Q. Did Judge McReynolds tell you of the action that
2180 had been taken by the court?

A. He did.

Q. He did?

A. Yes, sir. He told me that——

Q. Did you get the telegram that Judge Clark sent you, which has been introduced in evidence?

A. Judge Clark did not send me any telegram. Mr. Brazelton came over to my office, as I now remember, about 5 o'clock that evening. I was seated at my desk doing some work, and he came in and read me a telegram.

Q. That has been introduced in evidence. That was the first?

A. Yes; I think it was.

Q. Then Judge McReynolds had shown you a telegram?

A. Judge McReynolds did not show me the telegram, but he stated to me that the Supreme had stayed the sentence, or something to that effect, and that this man was a United States prisoner, and to charge him up to the United States.

Q. That was about what time in the afternoon?

A. He was on the bench and it was after court had taken up, and my recollection now is it was after 2 o'clock. It was in the afternoon session, and he was on the bench at the time he made this statement to me. It must have been after 2 o'clock. I know that I had not been to my dinner at that time. I had been out on my canvass,
and I came back to the jail and learned that there Judge McRey-
2181 nolds wanted to see me. I had waited so as to canvass among the mechanics during the noon hour, and consequently reached the jail after the noon hour; and when I learned that Judge McReynolds wanted to see me I went over to the court room. The afternoon session was on; he was on the bench; and I feel sure that it was after 2 o'clock.

Q. And he told you, in substance, that the Supreme Court had granted a stay in Ed. Johnson's case?

A. Yes.

Q. And that he was to be kept as a federal prisoner?

A. That he was to be kept as a federal prisoner, and for me to charge him up to the Supreme Court.

Q. In other words, you understood you were to keep him as a federal prisoner?

A. Yes, sir.

Q. That telegram which he read to you referred to certain sections of the Revised Statutes, did it not?

A. Judge McReynolds did not read me any telegram. Mr. Brazelton read me a telegram that evening.

Q. That referred to certain sections of the Revised Statutes?

A. Yes, sir; as I now remember it. He did not leave the telegram with me; he read the telegram to me.

Q. Did you look up those sections of the Revised Statutes?

A. No, sir.

Q. Did you make any note of them?

A. No, sir; I did not make any note of them.

2182 Q. Did you make any effort to get your deputies, or to have any special guard at the jail that night for Ed. Johnson?

A. I did not. I supposed that this information to me was that I should not hang Johnson the next day.

Q. You understood that this information was that you were not to hang Johnson?

A. Yes, sir; that is what I understood.

Q. You did not understand you were to keep him as a Federal prisoner? You do not mean that, I suppose?

A. Well, I supposed that possibly by the next day's mail I would get some notice direct to me, personally to me from the court, and when I did I would change the prisoner from a state prisoner to a Federal prisoner.

Q. You understood in the meantime from Judge McReynolds' statement to you that you were then holding him as a Federal prisoner and to hold him as a Federal prisoner?

A. Yes; I understood that, although I had not transferred him because I was waiting for this personal notice.

Q. But you understood that the Supreme Court of the United States had as a matter of fact granted an appeal and a stay of execution, which was in effect that he was not to be executed the next day and that he was to be kept in your custody as a Federal prisoner?

A. Yes; I understood he was to be held as a Federal prisoner.

Q. And although this telegram that Mr. Brazelton brought you referred to some sections of the Revised Statutes of the United

2183 States, you did not even look them up?

A. I did not have the statutes.

Q. There is a law library in town; you have an attorney?

A. Yes, sir.

Q. Major Clift is your counsel, and he has the Revised Statutes of the United States, has he not?

A. Yes, sir; I think so.

Q. And they are in Temple Court, which is about three blocks from the jail?

A. Yes, sir; in the same block.

Q. And you did not look them up at all, as I understand you?

A. No, sir.

Q. Captain, did you recognize any of those men that were surrounding Mr. Gibson?

A. No, sir; I did not.

Q. What floor was he on?

A. He was on the office floor; that is, on what we know as the white floor.

Q. Inside or outside of the door between the office and the jail proper?

A. Well, he was inside of the jail, in the corridor of the jail.

Q. Did you recognize anybody in there that night until that mob had left; and if so, whom did you recognize?

A. I did not recognize anybody that was breaking into the
2184 jail. I saw several people around there that I recognized, but they were not engaged in the breaking in of the jail.

Q. What were they engaged in doing, the most of them?

A. Well, they were standing around.

Q. One man at a time was engaged in breaking in, I suppose? There was only one man using the sledge hammer at a time, was there not?

A. Well, I was where I could not see very well. There were a number of men; in fact that portion of the jail corridor was full of men. I was up in this hallway where they had to work the drag to take in the food to the prisoners.

Q. How many men were engaged in the actual breaking in, and how many were not so engaged?

A. Well, I did not see anybody up there that I recognized except that I saw three newspaper reporters, Mr. Chivington and Mr. Kirby Wert—well, I guess it was two; I do not remember seeing Curtis, if he was there. He states he was there, but I do not remember seeing him. But I did see Kirby Wert, and I saw Mr. Chivington.

Q. There were men around you, as I understand you, that had you?

A. Yes, sir; there were five or six men, I suppose.

Q. Did you recognize a single one of those men?

A. Not one.

Q. Not one of them?

A. No; not one.

Q. How long were they there with you?

2185 A. Well, I think I was there about 30 minutes.

Q. And you did not recognize a single man?

A. No, sir.

Q. Did you ask them their names?

A. No, sir; I did not.

Q. Were they calling each other by name?

A. I did not hear any names called among them.

Q. Did they have masks on?

A. Some of them did and some did not.

Q. Did you make any effort to ascertain their names?

A. No, sir; I did not.

Q. You did not?

A. No, sir.

Q. Who else besides these three reporters did you see? Did you see Dr. Sutton?

A. I saw Dr. Sutton.

Q. What was Dr. Sutton doing?

A. Dr. Sutton was on the stairway.

Q. Did you see him go into Ed. Johnson's room?

A. No, sir; I did not. I heard afterward that he did go in, but I did not see him.

Q. Who else did you see?

A. Those were the only ones that I remember. Well, I did see, as I remember, Frank Stoops.

Q. Who was Frank Stoops?

A. Frank Stoops is a man now engaged in the oil and paint business here.

Q. What was he doing?

2186 A. Well, he was standing on the steps, too—at the top of the steps.

Q. Who else did you see?

A. I do not remember anybody else that I recognized.

Q. How many men had masks or handkerchiefs on?

A. Well, I could not say that; I simply know that some of them did have handkerchiefs tied over their faces and some of them did not.

Q. Were they talking to you?

A. No, sir; they were not talking to me.

Q. They were not talking to you?

A. No.

Q. They were not engaged in a colloquy or conversation with you?

A. No, sir.

Q. They stayed mum during these 30 minutes you were there?

A. Well, they might have said something among themselves, but they were not addressing any conversation to me.

Q. And you did not recognize a single one of those men?

A. No, sir.

Q. Not one of those men?

A. No, sir; not one.

Q. Which floor were you on during this time?

A. At the time you refer to I was on the top floor, up in this hallway.

2187 Q. How much is that raised above the rest of the hallway?

A. It is raised about, I would think, three or four feet.

Q. And you were there about 30 minutes?

A. Yes.

Q. Where were you the rest of the time?

A. Well, I was there——

Q. Where?

A. In this hallway, about 30 minutes from the time I got there. It took some little time going in and some little time going up.

Q. Did you talk to Chivington?

A. I do not remember to have spoken to Chivington.

Q. Did Chivington come up and speak to you?
A. No.
Q. How close were you to Chivington?
A. Well, I suppose I was 10 or 15—10 feet away from him.
Q. You did not address any words to him at all, that you remember?
A. No; I did not.
Q. Did you make any effort to have him come to you?
A. No, sir.
Q. Did you make any effort to send him out?
A. No.
Q. He was perfectly free there, was he not?
A. Yes, sir.
2188 Q. Nobody was restraining him at all?
A. No.
Q. Was there anybody restraining this other newspaper man?
A. I just saw him as he was going down the steps. I think that he probably walked down about the time I was carried up to this——
Q. You misunderstood my question. Was anybody restraining him?
A. Oh, no.
Q. Did you send him after help?
A. No, sir; I did not.
Q. Did you send anybody out after help?
A. No, sir.
Q. You did not?
A. I did not.
Q. Did you call for a posse there to relieve you or help protect that prisoner?
A. No; I did not. I did not think it was——
Q. You were an officer sworn to protect the prisoner?
A. I did not think there was anybody there that would have responded to the call if they had been called upon.
Q. You did not make any effort at all?
A. No, sir; I did not. I made no effort except that I remonstrated with the mob.
Q. You remonstrated with them?
2189 A. Yes. I said to leave the man alone and let the law take its course.
Q. You made no effort to exert any violence?
A. No violence.
Q. You used no force?
A. No, sir.
Q. You did not pull your gun?
A. I had no adequate force, and knew that the pulling of a gun would be useless.
Q. You were sheriff of the county?
A. Yes, sir.

Q. And you did not pull your gun?
A. No.
Q. You had strength enough to have pulled the trigger, I suppose?
A. Oh, I guess I could have pulled the trigger.
Q. You made no effort at all?
A. No, sir.
Q. You recognized these newspaper reporters walking up and down?
A. Yes.
Q. And you recognized Dr. Sutton. Did you ask him to help you?
A. No; I did not.
Q. You called on not a single citizen?
A. No.
Q. You sent nobody out with a message to any of your deputies——

2190 Mr. LYNCH. Wait a minute. You are interrupting the witness before the question is answered.

Mr. SANFORD. If I have done that I did not mean to, and certainly did not intend to. I want the witness to answer, of course.

By Mr. SANFORD:

Q. You did not send out for any of your deputies?
A. No, sir; I had nobody to send.
Q. You did not try to send this newspaper reporter out?
A. No, sir; I did not know where to send.
Q. You did not try to send anybody before you went in among those people standing on the sidewalk?
A. No; I did not recognize anybody standing on the sidewalk.
Q. You knew where the police headquarters were, did you not?
A. I supposed those men belonged to the mob that I saw. I regarded them all as the mob, those that I did not know.
Q. But you went right on in? You were perfectly free then, before you pushed your way into the crowd, were you not?
A. Yes, sir.
Q. You could have turned, without anybody interfering with you, and gone about three blocks to the police station and got the police?
A. Yes, sir; I could have done that.
Q. But you did not?
A. It did not occur to me to do that.

2191 Q. And you pushed your way right through those people that you supposed were a mob, without making any effort to turn and get out and go for help?
A. I did not know until I got inside of the jail what had occurred.
Q. No; but you have already stated that you anticipated there was a mob inside?
A. Oh, yes.
Q. And you knew——
A. I had been told that there was something wrong going on there.
Q. You knew that there was no telephone communication?

A. Well, I anticipated there was not by the fact that I did not get a reply.

Q. And your own language has been that you anticipated there was a mob in there.

A. I so state now.

Q. And yet you went right on in. You made no effort to summon a posse; you made no effort to send out and get help; you went on in; you saw newspaper reporters and others in there that were perfectly free and were good citizens. They were your personal friends, were they not—men like Chivington, and men of that sort?

A. Yes.

Q. And they were perfectly free; they were not restrained; you did not call on a posse; you had a pistol——

Mr. LYNCH. Wait a minute. We protest against this con-
2192 tinued argument here without giving the witness a chance to answer anything.

Mr. SANFORD. I am asking for an answer at the end of my question.

Mr. LYNCH. But your question is a speech.

By Mr. SANFORD:

Q. You did not draw your pistol; you did not endeavor to use any force whatever to protect the prisoner? Is not that a fact?

A. I did not.

Q. That answer is to that question?

A. Yes, sir; that is the answer.

Redirect examination by Mr. PRITCHARD:

Q. Mr. Sanford, sitting here in a quiet room, surrounded by orderly citizens, was asking you whether you did not do sundry things under those circumstances. I will ask you whether you were situated at that time as Mr. Sanford is when he propounding these questions?

A. I think the surroundings were very different.

Q. I will ask you also if a man's "hindsights" are not a good deal better than his "foresights?"

A. Yes, sir.

Q. And whether or not it is a good deal easier for him to propound questions as to what you, one single man, did under the circumstances than it would be for him under the like circumstances to have done any of those things himself?

2193 Mr. SANFORD. I object to the leading and suggestive nature of the question, and to the argument with counsel's own witness.

By Mr. PRITCHARD:

Q. I repeat that question.

A. If I had perhaps had the thing to go over again, I perhaps would know better what to do, and would act differently. But I was acting at that time on the spur of the moment, and had gone there

for the purpose of seeing what the trouble was and to do what I could to protect the prisoner.

Q. You had gone there, had you, single-handed and alone?

A. I had.

Q. And you had pushed your way through what appeared to be a mob?

A. I had.

Q. Did you have any reason to believe that they were not a mob when you pushed your way through?

A. I did not. I so regarded them.

Q. Did any man offer to assist you or lend you a helping hand, or did you by force get through the mob as best you could?

A. No one offered any assistance, or suggested that they were ready to render assistance.

Q. You saw there some persons whom you have named. The others, you say, you did not recognize?

A. No, sir; I did not recognize them.

2194 Q. Did any of these courageous gentlemen, that Mr. Sanford so delighted in referring to, offer to assist you? Did they come to your rescue at all?

A. No, sir.

Q. Not one of them?

A. In fact, I was under arrest myself at the time I reached the inside of the jail.

Q. Did anybody rescue you from that arrest?

A. No one at all.

Q. Did they see that you were under arrest, and while you were under arrest did you see any man go out and call anybody to relieve you from arrest?

A. I did not.

Mr. SANFORD. I object to the continual leading and suggestive examination of counsel's own witness.

By Mr. PRITCHARD:

Q. Did anybody say anything to you about coming to your rescue?

A. No, sir; not a soul. I was under arrest from the time I entered the inside of the jail.

Q. From the time you entered the inside of the jail?

A. Yes, sir.

Q. Did you know at the time you entered whether there were persons inside the jail or not?

A. Well, I did not until I got inside the door.

Q. Until you got to the door?

A. Yes, sir.

Q. State whether or not you were immediately placed
2195 under duress?

A. I saw the door was open, and I was immediately seized as I got inside of the door.

Q. Immediately?

A. Immediately.

Q. Did you have any opportunity to go elsewhere—to go a block or two and call for somebody?

A. No, sir; I did not.

Q. Mr. Sanford suggests that it was only several blocks to the police station. Did you have an opportunity to go one block, or a dozen blocks, or any distance whatever?

A. No, sir; I had no opportunity to go anywhere.

Q. You had one pistol?

A. Yes, sir; I had one pistol, and was surrounded by many others.

Mr. SANFORD. I object to the leading question.

By Mr. PRITCHARD:

Q. You had just run from your home?

A. Yes, sir.

Q. Captain, there has been a good deal of talk, first and last, about the location of that jail. I will ask you what floor of the jail the office is on; that is, whether it is on the first or the second floor. I am not counting the ground floor, now.

A. It is the second floor from the top.

Q. The second floor from the top. Would that be the first main floor above the ground?

A. Well, that is the ground floor.

2196 Q. Are there two basement floors below that?

A. Yes; two floors below that.

Q. Then, it is on the first floor above the ground—the first main floor?

A. Yes, sir.

Q. I will ask you to look at this draft of the location of the jail and state whether it is correct [handing a paper to the witness]. This paper that I show you is marked "First floor plan of Hamilton County Jail, Scale ¼ inch=one foot."

A. This is the outside office [indicating]. This is the entrance [indicating].

Q. Do not say "this," Captain. The thing marked "Entrance Lobby," what is that?

A. That is the office entering——

Q. Is that the main entrance to the jail on the ground floor?

A. Yes; that is the main entrance to the jail.

Q. Marked "Entrance Lobby?"

A. Yes, sir.

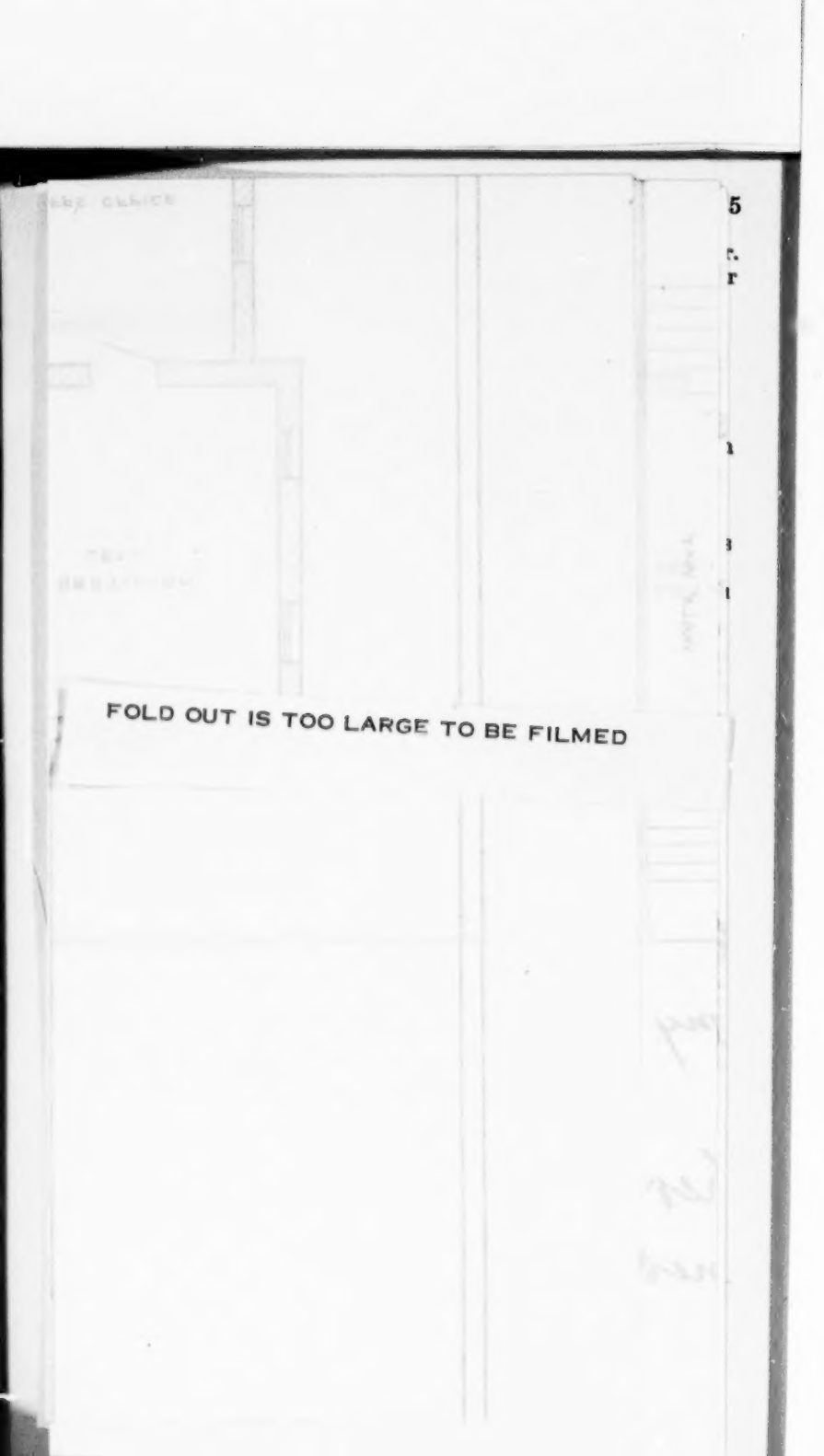
Q. Now, there are marked, immediately in connection with that, "Double Iron Doors." State whether or not that leads into the space marked "Corridor."

A. Yes, sir.

Q. State whether there are two more floors below this corridor.

A. Yes, sir; that is correct.

2197 Q. Is there a stairway leading from the corridor down, and also a stairway leading from the corridor up, as indicated upon this map?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A. Yes, sir; one leading down and one leading up to the top floor.

Q. Are there cells on that floor, and is there a steel revolving door connecting those cells with the corridor?

A. There is; yes, sir.

Q. As indicated on the plan?

A. As indicated on the plan. It is what we call the circle.

Q. Now, where did you enter from?

A. I entered right here [indicating].

Q. You entered from the place where the steps are indicated on this diagram right into the entrance lobby?

A. Yes, sir.

Q. Then where did you go?

A. I went immediately to this door [indicating]. This room was full of people.

Q. The room marked "Entrance Lobby" is the room that you found full of these people?

A. Yes.

Q. Where were you seized?

A. I was seized right here [indicating].

Q. At that doorway leading into the corridor?

A. Yes, sir; just as I got to the door.

Q. Now, where is it that you were kept?

A. I was carried up this stairway [indicating].

2198 Q. Up the stairway marked "Up?"

A. Yes, sir.

Q. Were you carried up to the top of the stairs?

A. Yes, sir.

Q. I now show you a plan of the second floor [handing a paper to the witness]. I will ask you whether this is a correct second-floor plan of the Hamilton County jail?

A. Yes, sir; this is the top floor.

Q. That is the second main floor?

A. Yes.

Q. Not counting the floors below the ground?

A. Yes, sir.

Q. Now, Captain, show us to what point you were carried and kept under guard?

A. I was carried up these steps here [indicating].

Q. Up the main stairway from below?

A. Yes, sir. Here is the circle [indicating].

Q. The steel revolving door?

A. Yes; going into the cells. I was carried up to the top of this floor and then up here [indicating], and shoved back into this——

Q. Do not say "this." You were carried up to the top of the main stairway. Then, is there not a flight of three or four steps leading up to another elevation of the floor?

A. Yes, sir; up to another elevation.

2199 Q. Then you were taken up that short flight of steps—three or four steps—on to the higher elevation of the same floor?

A. Yes, sir.

Q. And at what point were you located, Captain, under guard?

A. Right at this point here [indicating].

Q. In the narrow space between the feed table and the wall?

A. Yes, sir.

Q. In that narrow hallway?

A. Yes, sir.

Q. Is the cell that Johnson occupied indicated on this map correctly?

A. Well, Johnson had all of this floor. It had been my custom, and was done with a prisoner who was under sentence of death about a year before Johnson. I removed all the prisoners from this floor and kept the condemned prisoner up here [indicating].

Q. The man that was under sentence of death?

A. Yes, sir; so that he might confer with his spiritual adviser and see members of his family uninterrupted by other prisoners; and Johnson was occupying all of this [indicating].

Q. The entire space?

A. The entire space. This floor had been occupied by colored prisoners and they had all been consolidated on the second floor from the ground floor and the floor under the white floor, or the
2200 floor below the office; and this had all been set apart for Johnson, and on this floor he had been baptised on Sunday.

Q. On the Sunday before?

A. On the Sunday before—the day before; and we were extending every comfort, bodily and spiritual, and everything else we could.

Q. Because he was under condemnation of death?

A. Because he was under condemnation of death.

Q. Do you know where his bedroom was?

A. I presume that he occupied that cell [indicating], but he was not——

Q. He was not confined to any particular cell?

A. No, not confined to any particular cell, except that that perhaps had been assigned for him to sleep in and occupy; but he had the entire floor and had had from the time he had been brought back from Knoxville.

Q. I will ask you to make the first diagram shown you, being the first-floor plan Hamilton County jail, Exhibit A to your testimony.

R. I make this plan, being the first-floor plan of Hamilton County jail, Exhibit A to my testimony.

Q. I will ask you to make the second paper shown you, namely, the paper marked "Second-floor plan of Hamilton County jail," Exhibit B to your testimony.

A. I make the second-floor plan of Hamilton County jail Exhibit B to my testimony.

Mr. PRITCHARD. I now ask the commissioner to identify them accordingly.

2201 (The above-mentioned papers were marked by the commissioner Exhibits A and B to the testimony of J. F. Shipp, and are appended hereto.)

Mr. SANFORD. Then we had better summon our witnesses.

Mr. PRITCHARD. We have some character witnesses here, which will take a very short time.

Mr. SANFORD. Then we had better summon our witnesses.

Mr. PRITCHARD. Yes; you might as well summon your witnesses.

(Thereupon, at 4.30 p. m., the hearing was adjourned until Friday, June 28, 1907, at 9 o'clock a. m.)

2202 CHATTANOOGA, TENNESSEE, *June 28, 1907.*

The hearing was resumed at 9 o'clock a. m.

Present: James D. Maher, the commissioner; Messrs. Sanford and Penland, and counsel for the various defendants.

W. T. CENTER, produced as a witness on behalf of the defendants, being first duly sworn by the commissioner according to law, is examined.

By Mr. PRITCHARD:

Q. What are your initials?

A. W. T.

Q. Where do you live?

A. Ducktown.

Q. How long have you lived there?

A. All my life, practically.

Q. What business are you engaged in?

A. I am at present contracting on a railroad. I have been a merchant most of my time since I have been grown.

Q. I will ask you whether you know a woman called Ellen Baker, or Elmina Baker, or Elmina Monday?

A. Yes, sir; I know that person.

Q. How long have you known her?

A. Possibly a year and a half.

Q. I will ask you whether or not you know her general character in the neighborhood in which she lives?

2203 A. Well, her character——

Q. Do not tell what it is. Do you know her general character?

A. Yes, sir.

Q. Is her general character good or bad?

A. It is very bad.

Q. From that general character, is she entitled to or would you believe her on oath, in a court of justice?

A. I would not.

Q. What business is that woman in? What business does she pursue?

A. I can't hardly tell. She has been accused of lots of things that I do not personally know.

Q. By reputation what business is she in?

Mr. SANFORD. I object to the reputation as to a matter of fact.

By Mr. PRITCHARD:

Q. By reputation, what business is she in?

Mr. SANFORD. I object to going into the details as to reputation as to any particular fact. He has proven her general reputation.

By Mr. PRITCHARD:

Q. What I want to ascertain is her business. If you know her business, state it. If you do not, state by reputation what her business is.

Mr. SANFORD. He has stated that he does not know it, and I object to going into reputation as to the fact.

2204 By Mr. PRITCHARD:

Q. Do you know personally what business she is in?

A. Yes, sir; I might say I personally know it. I knew her about a year and a half there, as I stated.

Q. What business is she in?

A. She is in what I would term it mostly a whorish business.

Q. I will ask you also whether she has followed the wild-catting business?

A. Yes, sir; she has been in that business some.

Cross-examination by Mr. SANFORD:

Q. You first stated that you did not know what business she was in, and then you state that you do.

A. Well, I did not personally, as I stated.

Q. You have not now any personal knowledge of what business she is in?

A. Not personal knowledge, but what I have heard there.

Mr. SANFORD. I object to any statement as to what you hear of her reputation on that matter.

By Mr. SANFORD:

Q. You have just known her a year and a half?

A. A year and a half.

Q. She was indicted for selling liquor once, was she not?

A. I think so; yes.

2205 Q. That is the amount of what you heard of that?

A. No, sir; I heard of that outside of that; that is, since she was indicted here and was in jail she has been in the liquor business on a light scale.

Q. When was that indictment?

A. When she was indicted?

Q. Yes, sir.

A. I suppose that was about a year and a half ago.

Q. Just about when you first knew her?

A. I didn't know her then. I did not know her until after that. I knew her then from that, and then I knew of her later.
Q. How far does she live from where you live?
A. Well, I don't know where she lives now.
Q. Do you know where she has lived?
A. She has lived in one of my houses at Ducktown.
Q. How long ago was that?
A. Possibly eight months ago.
Q. How long did she live in one of your houses?
A. She lived in one of my houses four or five months.
Q. How many people do you know that know her? Do you know her acquaintances and her general friends?
A. There are possibly one hundred people that know her that I know.

Redirect examination by Mr. PRITCHARD:

Q. How came she to move out of your house?
2206 Mr. SANFORD. I object to that.
The WITNESS. I ordered them out.

By Mr. PRITCHARD:

Q. What for?
Mr. SANFORD. I object to that as incompetent and irrelevant.
The WITNESS. The way they were running their business, selling whiskey, and men were running about the house, and I ordered her out.

By Mr. PRITCHARD:

Q. Is there any whiskey sold legally in that country?
A. No, sir.
Q. There is no license?
A. No, sir.
Q. When you speak of wild-catting, state whether you mean dealing in illicit liquor.
A. I mean by that that she was selling moonshine liquor; sneaking in and selling it at night to various persons.
Q. Without any license?
A. Yes, sir; without any license.

Recross-examination by Mr. SANFORD:

Q. You have had trouble, then, with her and her husband?
A. No, sir.

2207 J. H. STUART, produced as a witness on behalf of the defendants, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. PRITCHARD:

Q. Where do you live?
A. I live at McKay's, Polk County, Tennessee.

Q. I will ask you if that is one of the numerous villages which go by the name of Ducktown?

A. Yes, sir.

Q. There is Copper Basin there, and several villages?

A. Yes, sir.

Q. Of which McKay is probably the principal one?

A. Yes.

Q. You live at McKay's?

A. McKay is the largest town there.

Q. All that country there is known as Ducktown?

A. Yes, sir.

Q. I will ask you if you know a woman who has been examined as a witness in this case, known as Ellen Baker, or Elmina Baker, or Elmina Monday?

A. Yes, sir.

Q. You know her by all those names?

A. Yes, sir.

Q. How long have you known her?

A. I suppose I have known that woman some 20 or 25 years.

Q. Ever since she was a child?

A. Ever since she was a child.

2208 Q. Do you know her general character in the neighborhood in which she lives?

A. I suppose I do.

Q. Is it good or bad?

A. Bad.

Q. From that general character is she entitled, or would you believe her on oath?

A. No, sir.

Q. I will ask you to state, if you know, what business that woman pursues for a livelihood?

Mr. SANFORD. If you know; not just guessing at it.

The WITNESS. I suppose——

Mr. SANFORD. I object to any supposition of the witness as incompetent.

By Mr. PRITCHARD:

Q. If you know. I will ask you if you, or if you know from the general reputation in the community?

Mr. SANFORD. I object to any proof of general reputation in the community on that point. The question must be confined to what he knows.

By Mr. PRITCHARD:

Q. I do not mean to confine my question to any personal transactions you have had with her in her business, nor to ask you whether you have had any.

Mr. SANFORD. I object.

By Mr. PRITCHARD:

Q. (Continuing.) But I will ask you whether or not you know——

2209 Mr. SANFORD. I object.

By Mr. PRITCHARD:

Q. (Continuing.)——by reputation or otherwise.

Mr. SANFORD. I object to the delicately seductive nature of the question.

The WITNESS. I know her to sell liquor, by reputation.

Mr. SANFORD. I object to that proof of reputation.

By Mr. PRITCHARD:

Q. Do you know whether it is illicitly or legally? Is it an illicit trade in whiskey, or does she run a saloon?

A. In we have no saloons in Polk County.

Q. State whether or not the sale of the whiskey is what they call wild-catting, or the sale of moonshine whiskey.

A. Yes.

Q. Do you know of any other pursuit she has for a livelihood, by reputation?

Mr. SANFORD. I object to reputation on that point.

By Mr. PRITCHARD:

Q. Answer. Do you know any other business that she follows?

A. I suppose she gets most of her money by being a lewd woman.

Q. I will ask you if that reputation is or is not notorious? Is she notoriously a lewd woman?

A. Yes.

2210 Mr. SANFORD. I object to the witness' supposition, and to the leading question.

By Mr. PRITCHARD:

Q. Is that a part of her general reputation, that she is engaged in the wild-catting business, and is a whore?

A. It is no supposition with me about her being a whore.

Q. It is no supposition?

A. No supposition. It is a true fact.

(No cross-examination.)

Mr. PRITCHARD. I believe that is all our witnesses. We will rest here. That is our case, as far as I know.

Mr. SANFORD. Do you mean that you close?

Mr. PRITCHARD. Yes, sir. I may possibly want to introduce a witness, but I do not think so.

Mr. SANFORD. I would like to know.

Mr. PRITCHARD. You know, as definitely as I can state it now. I know of no other proof that we want to offer. I have just inquired of my client, Captain Shipp, and he says he knows of none. That is as fully as I can state it.

Mr. SANFORD. I do not want to open in rebuttal until the defense finds out whether or not it rests.

Mr. PRITCHARD. That is as fully as I can find out now. I can tell you, as far as I am able to ascertain, that we are through. (After conference.) Captain Shipp tells me that he has sent for a witness that he wants to see.

2211 Mr. SANFORD. You have one more witness?

Mr. PRITCHARD. If we put him on it will probably necessitate putting on one or two more.

Mr. SANFORD. Have all the other defendants except Captain Shipp closed?

Mr. CHAMLEE. We have closed the testimony for Luther Williams and Paul Werner. We rest our case.

The COMMISSIONER. Mr. Shepherd, have you closed for your clients?

Mr. SHEPHERD. Yes, sir; I have mentioned that to Mr. Sanford.

The COMMISSIONER. We want to get it on the record.

Mr. SHEPHERD. I have mentioned to Mr. Sanford that I might possibly want to ask a few more witnesses about the character of Stonecipher, although I have no more witnesses summoned and do not know of any.

Mr. SANFORD. I should object to any further evidence, of course, after starting the rebuttal. I would like to have the defendants announce whether they close or not.

The COMMISSIONER. It ought to be understood that the defense is closed before you start in with your testimony in rebuttal.

Mr. COOKE. Suppose we adjourn until to-morrow?

Mr. SANFORD. We all want to get through.

Mr. CHAMLEE. We announce the testimony in the cases of T. B. Taylor and G. W. Brown closed.

2212 Mr. SANFORD. As I understand, everybody has closed except Captain Shipp. Is that it?

The COMMISSIONER. That is my understanding.

Mr. LYNCH. Yes.

Mr. SANFORD. And you may have one or two more witnesses, and will know in half an hour or so.

Captain SHIPP. Yes; I think so.

Mr. SANFORD. With that understanding I want to introduce a witness or two with reference to Frank Ward, and that can be done with the understanding that Frank Ward has closed.

Mr. CHAMLEE. Mr. Hood is Mr. Ward's regular counsel. I will communicate with him.

Mr. SANFORD. All right, if you will, please. I have some witnesses here that I will introduce as soon as he comes.

(After a conference.)

Mr. SHEPHERD. We close for the defendant, Shipp.

Mr. SANFORD. Everybody has closed then. As I understand it, the defendants have all closed?

The COMMISSIONER. The stenographer will note that the defense has closed.

Mr. SANFORD. I want to go ahead with some witnesses with reference to Mr. Ward.

Mr. CHAMLEE. Mr. Hood is on his way here now.

Mr. SANFORD. I will wait until Mr. Hood gets here.

(At this point Mr. Hood entered.)

2213 *Testimony in rebuttal.*

Mrs. J. H. SPRINGFIELD, produced as a witness on behalf of the Government, in rebuttal, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. You live in Chattanooga?
A. Yes, sir.
Q. How long have you been living here?
A. About eight years.
Q. Where were you living in the year 1903?
A. On Chestnut street.
Q. Do you remember the number?
A. 513.
Q. 513 Chestnut street, in Chattanooga?
A. Yes, sir.
Q. Are you living there now?
A. No, sir.
Q. Did you have boarders?
A. Yes, sir.
Q. In your house?
A. Yes, sir.
Q. Do you know J. N. Stonecipher?
A. Yes, sir.
Q. A carpenter and contractor?
A. Yes, sir.

Q. Did he ever board with you?

2214 A. Yes, sir.

Q. What time; what year?

A. He boarded with me that first time; that year—1903.

Q. Do you know the defendant, a man named Frank Ward? Did you ever know him?

A. Yes, sir.
Q. What was his occupation?
A. He was a bricklayer.
Q. What sort of a looking man was he?
A. A big heavy-set man; a large man.
Q. Did he have any marks about him?
A. Not then, he did not.
Q. Do you know him now?

A. Yes, sir.
Q. Has he got any mark about him now?
A. He has a scar on his face.
Q. Did he board with you, do you say?
A. Yes, sir.
Q. When did he board with you?
A. The winter of 1903.
Q. Did he board at your house at that time or at the same time Stonecipher did?
A. Yes, sir; he boarded at my house before Stonecipher.
Q. Was that the only time Ward boarded with you?
A. He has boarded with me two or three times; I don't know.
2215 I remember twice. I don't remember just what time. The first time was about five or six years ago, before I knew Mr. Stonesipher at all.
Q. Did he ever board with you at the same time Stonecipher was boarding with you?
A. Yes, sir; in 1903 he did.
Q. They both boarded there at the same time?
A. Yes, sir.
Q. State to the court how their rooms were; how far apart, or close together?
A. They were adjoining rooms.
Q. You mean by that their bedrooms.
A. Yes, sir; their bedrooms were adjoining rooms.
Q. Were they in the same part of the house?
A. No, sir; they were in the back part of the house?
Q. Did they have, or not, connecting doors?
A. Yes, sir.
Q. Was there anything in those two rooms that was in common?
A. There was a stove in one room, that Ward was in, that furnished fire for both of them. I suppose they sat by it. I couldn't say they did.
Q. That stove in the room Ward was in was furnished for their joint use?
A. Yes, sir.
Q. Did any of your boarders eat with you?
A. Yes, sir; both of them eat with me at the table.
Q. Did they eat at the same or a different table?
A. The same table.
2216 Q. How long would you say they were there together?
A. I couldn't say positively. Probably two or three months, or may be not so long.

Cross-examination by Mr. HOOD:

Q. What number on Chestnut street did you say that was?
A. 513.
Q. That was in 1903?
A. Yes, sir.

Q. Do you remember how long you lived at that place?

A. One year.

Q. I will ask you to state who else boarded with you at the same time?

A. There were several. George Hawkins, for one, and Mr. Stonecipher's brother for another, and Will Higgins, for another, and John Vining, and Jeff Flemings and several others. I don't remember just exactly.

Q. Where did you live in the year 1904?

A. I moved on Georgia avenue.

Q. Who boarded with you there?

A. Well, I couldn't tell you who all boarded with me. I have several there yet. The Stonecipher that boarded with me is still there.

Q. He is still with you, is he?

A. Yes. He wasn't with me all the time. He moved up in town and stayed a while.

2217 Q. He is boarding at your house now, is he?

A. Yes, sir.

Q. You and Mr. Stonecipher have been talking about this case, have you not?

A. No, sir; I never talked with Mr. Stonecipher about the case in my life.

Q. You never said a word to him about it?

A. No, sir. He never talks very much.

Q. Nor he to you?

A. No, sir.

Q. You know about the proof that has been introduced here against his character, do you?

A. Well, I have read a little of it in the paper; that is all; but very little.

Q. He has not discussed that with you at all?

A. No, sir; not at all.

Q. He never spoke to you at all?

A. No, sir; he never talked very much to me. I have heard him speak at the table to different parties.

Q. Nobody ever talked to you about this case at all?

A. Not until I came to the custom-house this morning?

Q. Not until you came to the custom-house this morning?

A. No, sir; I didn't know what I was here for.

Q. And you never discussed the case in any way with anybody until this morning, after you came to the custom-house?

A. No, sir; because I really did not know what I was 2218 here for.

Q. I will ask you to state if Mr. Stonecipher did not tell you it was material that he should prove he was acquainted with Ward?

A. No, sir; Mr. Stonecipher did not.

Q. Nobody told you that?

A. No, sir.

Q. How did they come to know that you knew anything about the case? How did you come to be a witness?

A. I couldn't tell you.

Q. You do not know?

A. No, sir.

Q. You have not told anybody in the world anything you know about the case?

A. I didn't know anything about the case.

Q. Yet you are here to testify.

A. I didn't know anything about the case at all; only these two men boarded with me at the time.

Q. You remember that well?

A. Yes, sir.

Q. Can you give the date when Mr. Ward commenced boarding with you?

A. No, sir; I could not unless I had my book.

Q. Can you give me the date when he quit?

A. No, sir.

Q. Can you give the date when Stonecipher commenced boarding with you?

2219 A. No, sir. I probably have the book at home that I have their names in, and I could tell by that.

Q. Was Mr. Ward a married man? Was his family there?

A. No, sir.

Q. Was he a married man at that time?

A. The first time he boarded with me he said so.

Q. He said so?

A. Yes, sir.

Q. Was his wife with him?

A. No, sir; he had two sons, too.

Q. Were his children with him?

A. No, sir; I have saw one of the sons, and he boarded with me the last time on Chestnut street.

Q. Did you used to run a boarding house on Market street, near Jack Quigley's saloon?

A. No, sir.

Q. Did you run a boarding house over J. D. Brown's and near Quigley's saloon?

A. No, sir.

Q. Did you run a boarding house there at all?

A. No, sir.

Q. Did your father-in-law run one there?

A. Yes, sir.

Q. Did you live there?

A. No, sir.

Q. Did you keep boarders in 1902?

A. No, sir.

Q. When did you first commence keeping boarders?

2220 A. Oh, yes, sir.
Q. In 1902. Where did you keep boarders then?
A. On Cherry street.
Q. On Cherry street?
A. Yes.
Q. Who boarded with you at that time?
A. Frank Ward, for one, boarded with me.
Q. On Cherry street?
A. Yes, sir.
Q. What month was that?
A. I lived there, I think, three years. I don't know.
Q. Did you keep boarders there three years?
A. No, sir; I didn't keep boarders all the time.
Q. Do you know a man by the name of Tom Ward?
A. No, sir.
Q. Do you know Bob Ward?
A. No, sir; I do not.
Q. Do you know Isaac Ward?
A. No. sir. He had several brothers. I didn't know their names.
Q. Did any of them board with you at all?
A. No, sir; not that I remember. Several people boarded with me that I didn't learn their names.
Q. What month was it that you say Ward and Stonecipher boarded at your place?
A. I told you I didn't know exactly what month.
Q. You do not know what month?
2221 A. No, sir; but it was during the winter.
Q. Do you know what year they boarded there?
A. 1903.
Q. Are you sure about that?
A. Yes, sir; I am sure about that.
Q. You do not know how long Mr. Ward boarded there?
A. No, sir.
Q. Can you remember everybody that boards at your house, and the length of time that he stays there?
A. Well, I guess not.
Q. How many boarders have you now?
A. About 42.
Q. How many did you have in 1903 on Chestnut street?
A. I only had about 15 or 16; maybe 18, sometimes.
Q. Do you remember when each one came there and when they went away?
A. No, sir; I do not.
Q. And who was there at the same time?
A. No, sir; not altogether.
Q. If you do not remember who was at your house at the same time, how can you remember that Mr. Stonecipher and Ward were there at the same time?

A. I remember they boarded there. There was two of the Stonecipher boarded there.

Q. Which one was the other?

A. Maynard.

Q. They boarded there at the same time?

2222 A. Yes, sir; at the same time. And there was a bricklayer from Nashville, Mr. Jennings, boarded there.

Q. Is it not a fact that a good many of your boarders may stay at your house and not be personally acquainted with others?

A. Yes, sir.

Q. That is true, is it not?

A. Yes, sir.

Q. So far as you know, Stonecipher and Ward may not have been acquainted with each other at all?

A. No; I don't know that they were. They could have been, because I didn't have very many boarders at that time. They eat at the table at the same time.

Redirect examination by Mr. SANFORD:

Q. You know that they occupied adjoining rooms and had the same stove, and ate at the same table together?

A. Yes, sir; that is all I know about it.

Recross-examination by Mr. HOOD:

Q. Do you know what time of the year that was?

A. It was in the winter.

Q. What time in the winter?

A. They came there in the fall.

Q. What time in the fall?

A. I don't know exactly what month. It must have been November.

2223 Q. Was it Christmas?

A. It was close to Christmas; I know during Christmas times they were there. They came before that time, but I don't know just what time.

Q. You do not know that they visited each other in their rooms, do you?

A. No, sir; I don't know a thing about that.

Q. You do not know that they are even acquainted?

A. No.

By Mr. SANFORD:

Q. Where is your husband? Is he traveling?

A. Yes, sir.

Q. What is his business?

A. He is traveling for Stagmaier & Fletcher.

Q. He is not in the city, but is out on one of his trips traveling?

A. Yes; on one of his trips.

CLAUDE SPRINGFIELD, produced as a witness on behalf of the Government, in rebuttal, being first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Are you the son of the lady who just testified?

A. Yes, sir.

2224 Q. Your name is Claude Springfield?

A. Yes, sir.

Q. How old are you?

A. 17 years.

Q. Have you been living at home, or are you living elsewhere?

A. I have been living at home, all but the last nine months I have been at school.

Q. Where is the school.

A. At Jasper, Tennessee.

Q. What business is your father in?

A. He is a drummer for Stagmier & Fletcher.

Q. Wholesale grocers?

A. Yes, sir.

Q. Of this city?

A. Yes, sir.

Q. He is not at home now?

A. No, sir.

Q. He is on one of his trips?

A. Yes, sir.

Q. Do you know J. N. Stonecipher, the contractor?

A. Yes, sir.

Q. How did you happen to know him?

A. I knew him at the house. He boarded at the house.

Q. At your house?

A. Yes, sir.

Q. Where were you living when he boarded with you?

2225 A. He is boarding with us now.

Q. Has he boarded with you before?

A. Yes, sir; he boarded with us on Chestnut street, I think, in 1903 or 1904.

Q. In 1903 or 1904?

A. Yes, sir.

Q. That was when you lived on Chestnut street?

A. Yes, sir.

Q. Do you remember who boarded there with him?

A. Well, sir, I know a few of them that boarded there.

Q. Name some of those people.

A. L. W. Coleman, a fellow named Vaughn, and Frank Ward.

Q. Do you know the defendant, Frank Ward, in this case.

A. Yes, sir.

Q. Is that the defendant [indicating]?

A. Yes, sir.

Q. He was boarding there at that time?
A. Yes, sir.
Q. How long did they board there together at the same time?
A. I couldn't say for certain; about two or three months, though, I think.
Q. Can you fix the exact dates?
A. No, sir; I can not.
2226 Q. What association did they have together? And when I say "they" I mean Ward and Stonecipher. What association did they have together?
A. I couldn't say that. They eat at the same table, sometimes.
Q. They ate at the same table sometimes?
A. Yes, sir.
Q. Was that a general table?
A. Yes, sir; just one table.
Q. Did all the boarders that had bedrooms there eat at the same table?
A. Yes, sir; they all eat at the same table. They sat at one table.
Q. Did all the roomers also dine at the table, or were there some that did not dine at the table?
A. They nearly all dined at the table.
Q. Ward and Stonecipher dined at the table?
A. Yes, sir.
Q. What about their rooms? Do you know they were?
A. They roomed for a while in adjoining rooms.
Q. Where were those rooms; were they front or rear?
A. In the rear, in a little house in the rear.
Q. In a little house in the rear?
A. Yes, sir.
Q. In adjoining rooms. Were they connected in any way?
A. Yes, sir; a door connected them.
Q. What was the heating arrangement for those two rooms?
2227 A. In one room there was a stove, and they both used that.
Q. They both used the same stove?
A. Yes, sir.
Q. Do you know which room it was that had this stove in it?
A. No, sir; I am not sure but it was Stonecipher's room.
Q. Are you sure about that?
A. No, sir; I am not exactly sure, but I think it was.

Cross-examination by Mr. CHAMLEE:

Q. How did you come to be a witness in this case?
A. I don't know that.
Q. Did anybody talk to you about what you were going to swear?
A. No, sir.
Q. Did anybody tell you what they wanted you to swear?
A. No, sir.
Q. Stonecipher did not talk to you about it?
A. No, sir.

Q. Not a living soul told you what they wanted you to swear here?
A. No, sir; I came here with my mother.
Q. You volunteered to come yourself?
2228 A. No, sir; she asked me to come with her.
Q. And that is the way you came to be a witness in this case?
A. Yes, sir.
Q. Stonecipher has been boarding at your house a long time?
A. Yes.
Q. You are good friends?
A. I couldn't say that.
Q. He is boarding with you now?
A. Yes, sir.
Q. Did he not tell you it was important to his character that you should come up here and swear that he and Ward had boarded at your house at the same time, at some time?
A. No, sir; he never said a word to me about the case at all.
Q. Who else boarded at your house in the year 1904, in the winter of 1904? Can you tell us?
A. I don't know whether this was 1903 or 1904.
Q. Did you not swear a while ago that it was 1903?
A. I said I didn't know whether it was 1903 or 1904—either one.
Q. Was it in 1903 or 1904?
A. I couldn't say for sure.
Q. You could not?
A. No, sir.
Q. Was it 1905?
2229 A. No, sir; it was not 1905.
Q. Was it 1906?
A. No, sir.
Q. Was it 1901?
A. I couldn't say for sure.
Q. Was it 1902?
A. It was either 1903 or 1904.
Q. How do you know that Stonecipher ever knew Mr. Ward at all, except by the fact that they boarded there? You do not know whether Stonecipher knew Ward at all?
A. No, sir; I said they eat at the same table.
Q. You do not know whether Ward ever knew Stonecipher or not?
A. No, sir; I couldn't say for sure.
Q. You could not say that he ever knew his name? How many boarders have you at your house now?
A. About thirty, I guess.
Q. How many of them do you know?
A. Pretty near all of them.
Q. You knew pretty near all of them?
A. Yes.
Q. Can you name thirty that are there now?
A. No, sir; I know their faces, but not their names.

Q. How long have these people been boarding there?
A. They come in off and on all the time.
Q. They board there for weeks, and you do not know their names?
A. Yes, sir.
2230 Q. And sometimes they board there for months and you do not know their names? They are boarding at your house for weeks, often, and you do not know who they are?
A. No; I know their faces, but I can not call names.
Q. You do not know their names?
A. No, sir.
Q. And there are people boarding at your house now who have been there for weeks, and some for months, and you do not know their names now. Is not that true?
A. Yes, sir.

Redirect examination by Mr. SANFORD:

Q. How many boarders did you have then?
A. About 18, I think.
Q. When did leave there?
A. We left there, I think, the winter before 1905.
Q. How long before had you gone there?
A. We went there—I think we lived there about nearly two years, probably, I think.
Q. Has Ward lived at your house more than once?
A. Yes, sir; he lived with us, I think, about 1900, on Cherry street; and he stayed there about eight months, I think.
Q. You know him well, then?
A. Yes, sir.
Q. Has Stonecipher lived there more than once?
A. Yes, sir.
2231 Q. Do you know him well?
A. Pretty well; not as well as I do Ward, though. He never had anything to say.

Recross-examination by Mr. CHAMLEE:

Q. Who never had anything to say?
A. Mr. Stonecipher. He never talked much.
Q. Has not Stonecipher talked to you about being a witness in this case?
A. No, sir; he never said a word to me in his life.
Q. Did he not come to you and tell you he had taken it upon himself to work up the evidence in the case?
A. No, sir.
Q. That there had not anyone authorized him, but that he had volunteered, in the interest of the public welfare only, to work it up?
A. No, sir.
Q. Has he not been working it up all the time?
A. Not as I know of.
Q. Is he working now?
A. I can't say.

Q. He has not any job, has he?
A. I couldn't say.
Q. He strolls around the streets and does not appear to be working anywhere, does he?
A. I don't know.
Q. Yet he is boarding at your house?
2232 A. Yes.
Q. And you have been there all the time?
A. Yes, sir.
Q. And he pretends to be a contractor?
A. Yes.
Q. Did he have any work in the year 1904 or 1903, or when he was boarding at your house?
A. Yes.
Q. Where did he work?
A. I couldn't say.
Q. You did not see him working anywhere?
A. No, sir.
Q. As far as you know, now, he has not done any work in five years, has he?
A. He has made a bluff at it. I reckon he worked.
Q. You know he has not done any work. You see him strolling around on the streets any time you go out on the street, do you not?
A. No, sir.
Q. Almost any time you see him sitting around his room, or on the street. I will ask you, for the last month or two if he has not been simply strolling around the streets of Chattanooga, and in your boarding house?
A. I have not been here but three weeks.
Q. Has he pretended to do any work then?
A. Not as I know of.
Q. Has he not been running for witnesses all over this town, and over this county?
2233 A. I couldn't say that.
Q. Did he not ask your mother to come here as a witness?
A. No, sir.
Q. And nobody asked you to come?
A. No, sir.
Q. Did not anybody talk to you about what they wanted you for as a witness?
A. No, sir.
Q. And did not know when you were put on the stand what you were going to swear?
A. No, sir.
Q. Not even the prosecuting lawyers told you what you *what you* were going to swear about?
A. No, sir.
Q. And they had not asked you anything about it?
A. No, sir.

Q. And they did not know anything about it?
A. No, sir.
Q. And your mother had not told you what they wanted you to swear to?
A. No, sir.
Q. They just discovered you and put you on the stand because they liked your looks?
A. No sir; my mother and I were sitting out in the hall talking, and a man said "We may need you."
Q. What kind of a looking man was it that said they might need you?
2234 A. I think that is him over there [indicating Mr. Penland].
Q. What did he tell you he wanted with you?
A. He didn't say.
Q. He just said they might need you?
A. Yes.
Q. You knew what he wanted?
A. No, sir; I didn't know what he wanted.
Q. Did he tell you he needed you badly?
A. No, sir; he didn't say why he needed me.
Q. He did not say whether it was a desperate case that he was in?
A. No, sir.
Q. He did not say anything at all?
A. No, sir.
Q. So you did not know what he wanted you to swear to at all, but you were just put on the stand?
A. Yes, sir.
Q. How long did you live on Cherry street?
A. We lived there about three years, I guess.
Q. You lived there about three years?
A. I think something like that. I wouldn't say for sure.
Q. What has been your occupation during that time?
A. Going to school.
Q. Where were you working or going to school at the time you say Stonecipher and Ward boarded there together?
A. I was going to school on McCallie avenue.
2235 Q. Do you know when you moved away from Chestnut street?
A. Yes, sir.
Q. When was that?
A. I think it was the spring of 1905; I think so.

Mr. SANFORD. I think that is all the witnesses we have, until after lunch. We hope to have a good many more here at that time.

Mr. CHAMLEE. Are you through with testimony about our man Ward?

Mr. SANFORD. No; I am going to introduce more proof about him.

(A recess was thereupon, at 11 o'clock a. m., taken until 1.30 o'clock p. m.)

2236 AFTER RECESS.

GEORGE F. NEESE, a witness produced on behalf of the United States, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Do you live in Chattanooga?
A. Yes, sir.
Q. How long have you been living here?
A. Nearly twenty years.
Q. What is your occupation?
A. I am a business man, in the furniture business.
Q. Do you know John N. Stonecipher?
A. Yes, sir.
Q. How long have you known him?
A. Well, I think it is between 10 and 15 years, as near as I can remember.
Q. Do you know his reputation and character in the community?
A. Well, Stonecipher has been——
Mr. SHEPHERD. Answer whether you know it or not.
The WITNESS. I think I do. I have never heard anything against Stonecipher until this trial came up. Of course I have read his——

By Mr. SANFORD:

2237 Q. Is his reputation in the community good or bad?
A. As far as I know it is good.
Q. From that reputation, and from what you know of him, would you give him full faith and credit under oath?
A. Yes, sir; I think I would.

Cross-examination by Mr. SHEPHERD:

Q. Mr. Neese, I will ask you to state if you know anything about the reputation of this man Stonecipher excepting in the business transactions that you have had with him?
A. That is principally all I know about him; yes.
Q. You have never heard his reputation discussed amongst the people who knew him?
A. No.
Q. You have never heard anybody talk about him one way or the other, have you?
A. No, I never did.
Q. And you are testifying to his character now from your own knowledge, are you?
A. From what I know about him; yes, sir.
Q. And not from the reputation that his neighbors would give him if they were called on to testify?
A. No, for I don't know anything about that.
Mr. SHEPHERD. We object to the testimony of this witness on the ground that he does not himself know anything with reference

2238 to the reputation of Stonecipher, and ask that it be excluded.

Mr. PRITCHARD. Let the motion to exclude that testimony be for all.

Mr. SHEPHERD. I make it in the interests of those that I represent.

Mr. CHAMLEE. Let the same objection apply to all the defendants as to Mr. Stonecipher's reputation.

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2246 J. A. WALTERS, a witness produced on behalf of the United States, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. Mr. Walters, are you employed around the county court-house in Chattanooga?

A. Yes, sir.

Q. Were you so employed on the night of the lynching of Ed. Johnson?

A. Yes, sir.

Q. Did you go to the court-house between 8 and 9 o'clock, or somewhere around there?

A. Yes, sir.

Q. After the crowd had assembled at the jail, when the trouble was going on at the jail?

A. Yes, sir.

Q. Do you remember who went with you up to the court-house?

A. No, sir; I can't remember all. I can remember some.

Q. Did you go with any other officers or constables? Were there any constables, white or colored, that went with you?

A. I went with two.

Q. Who were they?

A. Will Allen and Franklin.

Q. Was Will Allen a white constable?

A. Yes, sir.

2247 Q. And Joe Franklin was a colored constable?

A. Yes, sir.

Q. And they went with you?

A. Yes, sir.

Q. How far did you go together?

A. We went to the gate of the court-house at 7th street.

Q. Is that the north or the south gate?

A. The south gate.

Q. Then what did you do?

A. I think Will Allen went into the court-house, and I don't know what become of the rest of them.

Q. Do you know what became of Franklin?

A. No, sir.

Q. Did you see Franklin later?

A. No, sir.

Q. You went on up to the court-house?
A. Yes, sir.

Cross-examination by Mr. SHEPHERD:

Q. Mr. Walters, I will ask you to state if you saw Franklin on Walnut street in front of the jail or in the jail.
A. No, sir.
Q. I will ask you to state if he was at the northwest corner of the court-house lot, on the steps that run up in the northwest corner of the court-house lot.
2248 A. Not that I know of.
Q. The only place you saw him was on 7th street?
A. Right where I left him.
Q. And you and Franklin went up the 7th street steps?
A. No, me and Allen.
Q. You and Allen went up the 7th street steps towards the court-house?
A. Yes, sir.
Q. And there you found Judge McReynolds and Attorney-General Whittaker?
A. Yes, sir.
Q. Which way did Franklin go?
A. I don't know, sir.
Q. He did not come up in the court-house lot at all?
A. No, sir.
Q. Do you know whether he went out in the direction Churchville, where that negro Hutchins lived?
A. I don't know which way he went?
Q. Mr. Walters, I will ask you to state if you know the witness J. N. Stonecipher, who testified in this case.
A. Why, I know two or three Stoneciphers. I don't know which is the one——
Q. How is that?
A. I know three Stoneciphers; I don't know their given names.
Mr. SANFORD. I object to proof in that matter as proof in
2249 chief. Your case is closed on that question. The witness has not been examined on that.
Mr. SHEPHERD. I was trying to help your case out a little.
Mr. SANFORD. I have not asked this witness on that question.
Mr. SHEPHERD. I know.

By Mr. SHEPHERD:

Q. I will ask you to state if you know the Mr. Stonecipher whose son was killed by Luke Pogue, and for which Luke Pogue was tried in the circuit court.
A. Yes, sir.
Q. I will ask you to state whether or not he is the same Stonecipher who testified as a witness for the Government in this case.
A. No, sir; I think not.

Q. I will ask you to state, when you left Franklin, if he was near the car line that ran towards Churchville, out Oak street and Georgia avenue.

A. No, sir; he was right in front of the gate, as well as I remember—right in front of the court-house gate.

Q. Just half a block from the street car line?

A. Yes, sir.

Redirect examination by Mr. SANFORD:

Q. Do you know where Franklin went?

A. No, sir; I do not.

Q. He might have gone in the court-house lot and he might have gone up the street; you do not know where he went?

2250

A. No, sir.

Q. Were you up at this gate at the northwest corner, that has been asked about, later?

A. No, sir; I was not there.

Q. So, if he had been there you would not have seen him?

A. No, sir.

Q. You do not know of your own knowledge what Stonecipher it was that testified in this case, do you? You did not hear him testify, did you?

A. No, sir.

Mr. SHEPHERD. The record shows it was John Stonecipher. Mr. Walters, will you come here, please?

(The witness left the stand as requested.)

Mr. SANFORD. I object to the witness coming back on the stand as my witness.

Mr. SHEPHERD. I am not through with him yet.

Mr. SANFORD. You can not talk to him unless you ask him questions on the stand. I desire the stenographer to note that the witness, over my protest, has left the stand and is consulting with counsel.

The COMMISSIONER. The stenographer will make a note of it.

Mr. SANFORD. Consulting with Judge Shepherd.

Mr. SHEPHERD. I will show if it is pertinent, may it please your honor, that Mr. Sanford has been spending the whole afternoon——

2251

Mr. SANFORD. I have examined my witnesses before I put them on the stand, as every other lawyer does, and as you do; but I do not want my witnesses to get off the stand, have a consultation, and then be put back on as my witnesses.

S. H. LEDFORD, a witness produced on behalf of the United States, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. You live in Chattanooga, Mr. Ledford?

A. My home is in Dalton. I work in Chattanooga.
Q. How long have you been in Chattanooga?
A. It was six weeks Sunday since I came up.
Q. Where did you come from?
A. I came from Dalton.
Q. Did you ever know John N. Stonecipher?
A. Why, yes, sir.
Q. How long have you known him?
A. I have knowed him ever since he was a boy—a little fellow.
Q. How many years ago?
A. Why, I suppose I have knowed him for—well, 30 years.
Q. How old are you?
A. I am 56.

2252 Q. Do you know his general reputation and character in the community in which he lived, down there in Georgia?

A. Well, up to about ten years ago, when I moved from the neighborhood where he was raised and where I lived.
Q. Up to that time, until you moved, did you know his general reputation?
A. Yes, sir.
Q. Was it good or bad?

Mr. SHEPHERD. We want to introduce the very same objection that the attorney-general did, that his knowledge of him is too far back, too remote. The statute of limitations runs against that.

By Mr. SANFORD:

Q. Did you answer the question, Mr. Ledford? Was that general reputation good or bad?
A. Well, I will say this: With the exception of something that occurred while he was postmaster—there was some talk of his not performing faithfully with the money——
Q. Was his general reputation good or bad?
A. Why, outside of that, it was good.
Q. Did he come clear of that matter?
A. I couldn't tell you, sir; I don't what they ever did with it.

Mr. SHEPHERD. We object to your cross-examining on it.

By Mr. SANFORD:

2253 From his general reputation, is he entitled to full faith and credit on his oath?

A. Well, I would have to say yes, because I know nothing else to say.
Q. Would you give him full faith and credit on oath?
A. Well, I would have to, under my own personal knowledge.

Cross-examination by Mr. SHEPHERD:

Q. Mr. Ledford, many years ago you lived in the same neighborhood that he lived in, about Cohutta, did you not?
A. Yes, sir.

Q. And you never heard anybody say anything about his character one way or the other?

A. No, sir.

Q. Except that people discussed this post-office trouble that he got into?

A. I heard that; yes, sir.

Q. That was bad, was it not?

A. Well, if it be true, of course it couldn't——

Q. And all the people that you ever heard discuss his character at all were discussing the bad features of it, were they not?

A. At that time.

Q. Did you at that time, or at any other time, ever hear anybody say anything good of him up in that neighborhood?

A. Well——

Q. Did you hear his reputation discussed at all?

2254 Mr. SANFORD. Let him answer. He was about to answer.

A. I couldn't answer only in this way, that I never heard anything discussed as to his character.

By Mr. SHEPHERD:

Q. You never heard anybody say that John Stonecipher had a good character, did you?

A. I don't think I ever heard them say.

Q. You never heard anybody say they would believe John Stonecipher on oath, did you?

A. I don't think I ever heard it; no.

Q. And the only thing you ever heard said about his character was that he had robbed the Government out of some money while he was postmaster; is not that true?

A. Well, they discussed that. I couldn't say how it was.

Q. Are you prepared to say that a man's reputation, when you never heard anything about him except that he had robbed the Government, is a good reputation?

A. Well, that part of it aint good; no, sir.

Q. And would you believe a man on oath who was guilty of the offense of robbing the Government while he was holding the office of postmaster?

A. Well, if you will allow me to answer the way I feel about it I will answer your question.

Q. Go ahead and answer it the way you feel about it.

A. I would believe John Stonecipher on oath; but I do not believe in robbing the Government.

2255 Q. Now, you believe John Stonecipher, not from his reputation, but from what you know of him personally, do you not?

A. Yes, sir.

Q. So that if you had nothing to go by except his general reputation you would not believe him, would you?

A. Well, John was—that is a hard question to get over. I want to give the man justice the way I feel; I can't do any other way. I would believe John on oath. However, if I didn' know all about

what I heard about his taking money from the Government—I have heard several sayings about it one way or the other, but I never did know what it was or how it ended, or how they got it settled.

Q. Now, Mr. Ledford, if you were to leave out of view entirely your personal knowledge and base it on his reputation alone, you would not believe him on oath, would you?

A. Well, that is what I am speaking about.

Q. Answer that question.

A. Well, I would be obliged to believe him.

Q. And yet you never heard anybody say anything about him except this bad thing of robbing the Government?

A. Well, I am speaking directly of my own personal knowledge.

Q. How is that?

A. I am speaking, I say, as to my own personal knowledge.

Q. You are swearing and basing your testimony that
2256 you would believe him on oath entirely on your own knowledge of the man, are you?

A. Well, knowing him as I have from a boy, I would have to believe him on oath.

Q. And in coming to that conclusion you exclude the bad reputation that he had made amongst his neighbors, do you not?

A. Well, I——

Q. You leave that out of view?

A. I hardly know how to answer that.

Q. Stonecipher has been performing in and about Chattanooga for the last 8 or 10 years, has he not?

A. Something like that; yes, sir.

Q. And you do not know a thing about the reputation he has made here in Chattanooga, do you?

A. No, sir; I do not.

Q. Do you not know it is a part of his reputation that as a contractor he burned a house up——

A. I never heard that; no.

Q. —so as to get the insurance money to enable him to rebuild the house and save money by that operation?

A. I never heard of it; no, sir.

Q. Did you ever hear anything about his performances in Galveston, Texas?

A. I never heard of that. It might all have been true, but I haven't heard it.

Q. You know his brother, Mr. H. M. Stonecipher, do you not?

2257 A. Yes, sir.

Q. His brother is a very clever man, is he not?

A. I always took him to be.

Q. A man of good reputation?

A. Well, I couldn't say anything as to—I knew both the boys together; I was raised up with them, and I knew about as much about one as the other.

Q. H. M. Stonecipher lost a son, did he not?
A. Lost a son?
Q. Yes; did he not have a son killed here by a man named Pogue?
A. I didn't know that, sir.

Mr. SHEPHERD. We want to note an objection to the testimony of this witness on the ground that he does not know the reputation of Stonecipher in the neighborhood in which he lives.

CHARLES SMITH, a witness produced on behalf of the United States, having been first duly sworn by the commissioner according to law, testified as follows:

By Mr. SANFORD:

Q. You live in Chattanooga, Mr. Smith?
A. Yes, sir.
Q. How long have you been living here?
A. Permanently since 1881.
Q. In what business are you engaged?
A. Contracting—stone.
2258 Q. Do you know John N. Stonecipher?
A. Yes, sir.
Q. How long have you known him?
A. About four or five years.
Q. Do you know his general reputation?
A. As far as I have inquired, it is good.
Q. I say, do you know his general reputation?
A. Well, yes.
Q. Is it good or bad?
A. It is good, so far as I have learned.
Q. From his general reputation would you give him full faith and credit on oath?
A. I would.

Cross-examination by Mr. SHEPHERD:

Q. What do you know about the reputation of John N. Stonecipher?
A. Why, when he has bought goods from me he gave me references to different people. I inquired about him and everybody spoke well of him.
Q. What goods were they that you sold him?
A. Building business—stone.
Q. Whom did he give you reference to?
A. I couldn't remember. It was about five years ago. There were four or five people.
Q. Name one man that he gave you a reference to.
A. I couldn't do it now. I believe one was Stone.
2259 Q. Stone?
A. I believe Stone was one of them. I won't be positive now.

Q. And that was simply with respect to doing his duty as a contractor, was it?

A. Yes, sir.

Q. And you sold him stone material to go into these buildings that he had under contract?

A. Yes, sir.

Q. Have you ever heard anybody that associated with him, that lived in the neighborhood where he did, say anything about him one way or the other?

A. I really don't know where he lives.

Q. So you do not know a thing about him except in business here?

A. Yes, sir; not in a social way, I don't know him at all.

Q. You do not know anything about his reputation amongst the people where he lives?

A. No; I do not.

Q. And you do not know anything about his reputation amongst the people with whom he associates, do you?

A. Except in a business way.

Q. And there were four or five people to whom he referred you?

A. Yes, sir.

Q. That gave him a good reputation as a contractor?

2260 A. Well, as a man that pays his bills, and being an honest man.

Q. An honest man that paid his bills?

A. Yes, sir.

Q. You never heard anything said about his reputation for truth and veracity, did you?

A. No, sir; I did not.

Q. You never heard anything said about whether he would testify truthfully or falsely on oath?

A. No; I did not.

Q. And you are swearing now that because a man would pay his bills he is a man that you ought to believe on oath, without reference to the reputation which he has in the neighborhood where he lives?

A. Well, the man never lied to me. I think I would give him credit for it as long as he didn't.

Q. Suppose you had known that a part of his reputation was that as a postmaster he robbed the United States Government of revenues coming into the post-office; would you say that he was a man of good character?

A. I don't know anything about that. I don't know if I would give him credit or not.

Q. Suppose that it was a part of his general character that as postmaster he had defrauded the United States Government out of revenues that came into his office. Would you then say he was a man of good character?

A. I don't believe I would.

Q. And if that was true about him, you would not believe him on oath, would you?

2261 A. No; I believe not.

Q. You know his brother, H. M. Stonecipher?

A. Not very well.

Q. You know the fact that it was H. M. Stonecipher whose son was killed by Luke Pogue, do you not?

A. Yes, sir.

Q. And not this John N. Stonecipher that you are testifying about?

A. The one I am speaking about is the small man.

Q. And it was the other man, the brother, that had a son killed by Luke Pogue?

A. I think so; yes, sir.

Redirect examination by Mr. SANFORD:

Q. You never heard, as a part of his reputation, that he had robbed the United States when he was postmaster?

A. No, sir.

Q. That is not a part of his reputation, so far as you have heard?

A. No, sir. If I had, I wouldn't have given him credit.

A. J. Cox, a witness produced on behalf of the United States, having been first duly sworn by the commissioner according to law, testified as follows:

2262 By Mr. SANFORD:

Q. Do you live in Chattanooga, or near Chattanooga?

A. Out on Montgomery avenue, at the foot of Mission Ridge, sir.

Q. How long have you lived there?

A. About 16 years.

Q. What is your business?

A. The coal business; coal and wood.

Q. Do you know John N. Stonecipher?

A. Yes, sir.

Q. How long have you known him?

A. About six or seven years.

Q. You know his general reputation?

A. Well, I think I do.

Q. Is it good or bad?

A. It is good.

Q. From that general reputation, and what you know of him, would you give him full faith and credit on oath?

A. Yes, sir; I would.

Cross-examination by Mr. SHEPHERD:

Q. Which John Stonecipher is it that you know, Mr. Cox?

A. Well, there is three or four of them. I know the whole family, Judge.

Q. You do not know which John Stonecipher you are testifying about, do you?

2263 A. I think I do; yes, sir.

Q. Which one is it?

A. There isn't but one, that I know of.

Q. I thought you said a while ago that there were three or four of them?

A. Three or four of the brothers.

Q. Three or four Stoneciphers; that is what you mean?

A. Brothers; yes, sir.

Q. And you do not know which one of the Stoneciphers testified in this case, do you?

A. Well, I think I do; yes, sir.

Q. How do you know that?

A. Because I know John Stonecipher.

Q. But you were not here when he testified, were you?

A. No, sir; I was not.

Q. Then how do you know about that?

A. Well, I know the John Stonecipher that he is asking me about. There may be more Stoneciphers than him.

Q. But you do not know whether he was a witness in this case?

A. No; I don't know anything about that, sir.

Q. Where did he live when you knew him?

A. Out there at Ridgedale.

Q. Who did he live with?

A. He lived with his family. I presume.

2264 Q. You did not know the John Stonecipher that boarded around town here, at Mrs. Springfield's, and other places, when he was carrying on contracting work, did you?

A. No, sir.

Q. You did not know that man?

A. No, sir.

Q. The one you knew was the one that had a family living at Ridgedale?

A. Yes, sir. He bought coal and wood from me.

Q. And afterwards a man by the name of Pogue killed his son, here in town, did he not?

A. That was not John Stonecipher.

Q. Whose son was he?

A. The older one.

Q. He is a very clever man, too, is he not?

A. So far as I know, he was—the old man was.

Q. Who did you ever hear say anything about this fellow John Stonecipher?

A. Not anybody.

Q. Not anybody?

A. No, sir.

Q. And not ever having heard anybody say anything about him, you then come into court and swear that he has a good reputation?

A. So far as I know.

Q. What do you mean by reputation? Do you know what that term means?

A. Well, he has been living out there about four or five
2265 blocks of me—as I said, I have known him for the last six or seven years. He has been to my office buying coal, and I have met him at the store and at church and at different places.

Q. And you never heard a single person say anything about his reputation, did you?

A. No, sir; not as to being bad or good.

Q. They never said anything about it either way?

A. No, sir.

Q. And you do not know what sort of a reputation the people that know him would give him, do you?

A. Well, I have known him a good while, and I would be compelled to give him a good one.

Q. That is for you, yourself?

A. Yes.

Q. But you do not know what his neighbors would say about him?

A. No; I don't know what they would say about him.

Q. And you do not know what his associates would say about him—the people that he associates with?

A. No.

Q. How long is it since he lived at Ridgedale?

A. Well, I don't know just exactly, Judge, how long it has been.

Q. Where does he live now?

A. The last coal I hauled to him, he had moved over on Ruish (?) avenue last winter.

Q. Did you know anything about him when he lived at Cohutta, Georgia, or in the neighborhood of Cohutta?

2266 A. Yes, sir; I knew him there.

Q. You knew him there?

A. Yes, sir.

Q. Did you know anything about the people that lived up around there?

A. No; I didn't know anything about the people that lived around there.

Q. You do not know what those people up there would say about John N. Stonecipher, do you?

A. Not a thing.

Q. So that the English of it is you are just testifying from your own knowledge of him as to his character?

A. That is all, sir.

Q. And you do not know a thing about his reputation amongst his neighbors and friends?

A. No, sir.

Q. Where did John Stonecipher live in 1903?

A. I don't think I could tell you.

Q. Where did he live in 1904?

A. I don't remember about those dates, where he lived.

Q. Did he live at Ridgedale in 1903?

A. I don't know whether he did or not. I think he has been going backwards and forwards to Texas and sometimes he would be there and sometimes somewhere else.

Q. You never knew that it was a part of his reputation in the Cohutta section of the country that as postmaster he had em-
2267 bezzled funds belonging to the Government that came into his hands as postmaster, did you?

A. No, sir; I never did.

Q. You never heard that about him at all?

A. No, sir; I never did.

Q. If you had heard that was a part of his reputation, that he was a man of that sort, then you would not say he was a man of good character, would you?

A. Well, I don't know as I would.

Q. If that was a part of his general reputation and character, that he had defrauded the Government in this way, state whether or not you would believe him on his oath.

A. Well, I don't know that.

Q. You do not know that he did that?

A. No, sir; I don't.

Q. But I say, supposing that that was a part of his character, then would you give him full faith and credit on his oath?

A. I don't know as I would.

Mr. SHEPHERD. We move to strike out the testimony of this witness because he shows that he does not know the reputation and character of Stonecipher, and he is testifying alone from his own personal knowledge.

Redirect examination by Mr. SANFORD:

Q. You never heard of that charge against him, that he as postmaster had taken anything from the Government?

A. No, sir.

2268 Q. You never heard any charge of that sort made against him at all?

A. No, sir. I never knew much about him. We went to his father's house and boarded there one week on a hunt, where I first got acquainted with him. I think that has been about seven years ago.

Q. You never heard any charge of that kind ever made against him?

A. No, sir; not after he come into our neighborhood, I never heard it.

Recross-examination by Mr. CHAMLEE:

Q. As I understand you, you have known him at Ridgedale for six or seven years?

A. Off and on.

Q. He has had his family out at Ridgedale all that time?

A. I don't know, sir, whether they have lived there all the time or not.

Q. That has been his home?

A. Practically, I think; yes, sir.

Q. For between six and seven years?

A. Yes, sir.

Q. All the time?

A. As well as I remember, he has been buying coal from me during the winter seasons off and on for the last four or five years.

2269 Q. He has been living at Ridgedale, three or four blocks from you, for six or seven years?

A. I don't know the date he lived there.

Q. Where did he live when he did not live there?

A. I couldn't tell you.

Q. That means he was there except when he was in Texas?

A. Yes; I think so.

Q. Did you hear about his getting into some trouble in Texas?

A. No, sir; I did not.

Q. He lived there all the time, except when he was gone to Texas?

A. I suppose so.

Q. You suppose? You say you know his character. You know whether he lived there, do you not?

A. I couldn't say that I know about his character.

Q. Have you ever heard about his boarding in Chattanooga?

A. No, sir.

Q. The man that you knew never boarded in Chattanooga, did he?

A. I couldn't tell you where he boarded.

Q. He was living there right by you?

A. I know he had a family and was living there in Dr. Evans' house when I hauled coal to him. The last coal I hauled to him he was over on Ruish avenue. When he moved back to Ridgedale he went to another house.

2270 Q. That is right close to where you do business?

A. Yes.

Q. So he could not have boarded in Chattanooga for three or four months without your knowing about it?

A. Oh, yes, sir; he might have been here all the summer season.

Q. I am speaking about the winter time, when you sold him coal.

A. Why, I suppose he might have boarded here and his family been out there.

Q. Did you ever know of his being separated from his family?

A. Not that I know of; no, sir.

Q. You never heard anything like that?

A. No, sir.

Q. Ridgedale is a suburb of Chattanooga, within about 15 or 20 minutes ride on the street car from the court house where we are having this trial?

A. It is about three miles up there; yes, sir—about 20 or 25 minutes.

Q. And you furnished this man coal all the winter time for the last six or seven years?

A. Off and on; yes, sir.

Q. And you never heard of his boarding in Chattanooga?

A. No, sir.

2271 By Mr. SANDFORD:

Q. Do you mean to say that you know where he was when he was not out there at Ridgedale, whether he was in Texas or in Chattanooga, or where he was?

A. No; only sometimes he would come in the office and tell me he had been to Texas, or something like that. He told me himself; that is how I come to know where he had been.

Q. He did not tell you every time he was not there where he had been?

A. No, sir; he did not.

Q. Do you know where he had been those other times when he did not tell you?

A. No, sir; I do not.

By Mr. CHAMBLEE:

Q. Did this man Stonecipher that you knew have a son?

A. Yes, sir.

Q. Is that son living now?

A. I think he is.

Q. When did you last see him?

A. I don't remember when I last seen him.

Q. Have you seen him within twelve months?

A. I don't know whether I have or not.

Q. I will ask you, as a matter of fact, if the son of the man you are talking about was not killed on Montgomery avenue some time back?

2272 A. No, not this man's boy. This aint the one.

Q. Do you know absolutely, unqualifiedly, that it was not the son of the man you are talking about who was killed?

A. Oh, he might have been killed, too, but the one that the fellow killed over there weren't this man's son that I am talking about—weren't John Stonecipher's son.

Q. You did not see him killed?

A. No; but he has been raised right there at Ridgedale with my boys for the last ten years, that boy has. I have known him since he was a little kid that high [indicating].

By Mr. COOKE:

Q. Where does he live now?

A. Who?

Q. John Stonecipher?

A. I don't know, sir.

By Mr. CHAMLEE:

Q. How long has he been moved from your place?

A. I don't know that either.

Q. When did he last live there?

A. Last winter was the last coal I hauled him—last winter a year ago, I mean.

Q. Have you seen him once a year for the last three or four years?

A. Yes; oh, yes.

Q. More than once a year? Have you seen him at least twice a year?

A. Well, I couldn's say positively about that.

2273 Q. Have you seen him three times a year?

A. I couldn't say how often he was around.

Q. And that is all you know about him—just when you would see him?

A. Just when he would come over to the office and buy coal.

Q. And you can not tell whether you saw him once a year, twice a year, or three times a year?

A. No; I couldn't say positively how many times.

Q. The fact about it is that you really know very little about the man?

A. No; I don't know very much about him.

Mr. CHAMLEE. We object to this man's testimony on the ground that he did not qualify as required by law in such cases.

Mr. SANFORD. We will ask an adjournment until to-morrow morning.

(Thereupon, at 4 o'clock p. m., the hearing was adjourned until Saturday, June 29, 1907, at 9 o'clock a. m.)

2274 CHATTANOOGA, TENNESSEE, *June 29, 1907.*

The hearing was resumed at 10 o'clock a. m.

Present: James D. Maher, esq., the commissioner: Messrs. Sanford and Penland; and counsel for the various defendants.

Mr. SANFORD. The Government has subpœnas out for three witnesses that we expected to call, namely Allen, the constable, and two others. The marshals have been hunting for them diligently yesterday and to-day, but cannot find them. We see no prospect of their locating them, so we will close.

The COMMISSIONER. The Government closes its case?

Mr. SANFORD. We close the case for the Government.

The COMMISSIONER. I suppose, then, we will take our final adjournment. Do you want to offer any proof in surrebuttal?

(After a conference between counsel the testimony on both sides was announced closed.)

(The hearing was thereupon adjourned.)

JAMES D. MAHER,
Commissioner.

2275 Ex. Martin No. 1. (See p. 1417.) James D. Maher, Comm'r.

CHATTANOOGA, TENN., *Janu'y 31, 1906.*

Mr. Geo. W. Brown, bought of George Martin & Company, grocers. Telephone 652. Cor. Sixth and Broad streets.

1906.		
	Balan	3.10
— 6.	Cab. 5, B. milk 5, eggs 30, L. beans 15, peaches 25	.80
	Cheese 5, onions 15	.20
8.	Eggs 30, bananas 15, s. milk 5, catsup 10	.60
9.	Milk 5, lard 25, s. pot. 20, pearline 5, krout 5, steak 15	.75
10.	Bacon 20, eggs 15, butter 20	.55
11.	Broom 35, krout 5, n. beans 10, onions 5, apples 10	.65
13.	Polish 10, starch 5, cabs. 5, meat 25, lard 25, st. 15	.85
"	Eggs 25, L. beans 15, s. pot. 10, milk 5	.55
15.	Snuff 10, soap 5, p. steak 20, butter 15, krout 5	.65
16.	Stak 15, oats 10, toms. 13, bred 5, p. steak 15	.58
"	Macaronia 10, cheses 5, apples 5, eggs 25, onions 15, bacon 15	.75
17.	S. milk 5, b. milk 5, steak 15, cab. 5	.30
18.	Cash	.25
19.	Hom'ny 15, milk 5, h. beans 10, chese 5, pickles 10	.45
	Steak 15, apples 10	.25
20.	Steak 10, grees 15, eggs 25, prune 15, milk 5	.70
	Hen 50, krout 5, butter 13, coffee 15, lard 25, p. steak 15	1.23
22.	Eggs 10, bacon 15, soap 5, g. dust 5, cab. 5, bred 5	.45
	Milk 5, p. steak 10	.15
23.	Milk 5, a. butter 10, bred 5, butter 13, bred 5, steak 15	.53
	Hominy 10, thread 5, krout 5, tea 15, ham 15, eggs 20	.70
24.	Steak 15, pumpkin 15, eggs 10, milk 5	.45
29.	Eggs 23, candy 10, pickles 10, p. steak 20	.63
31.	Butter	.35
		16.47

Paid. A. R. Martin Co. W. A.

2276 Ex. Martin No. 2. (See p. 1417.) James D. Maher, Comm'r.

CHATTANOOGA, TENN., *Feb. 28, 1906.*

Mr. Geo. W. Brown bought of George Martin & Company, Grocers. Telephone 652. Cor. Sixth and Broad streets.

1906.		
Feb. 1.	Apples 10, bannas 05, eggs 20, bred 10, crackers 10, thred 5	$0.60
3.	Cheese 5, bred 5, apples 10	20
8.	Macaroni 10, chese 10, thred 5, sousage 15	40
	P. stak 20, butter 25, pickles 10	55
9.	Butter	30
11.	Eggs 20, butter 25, milk 10, p. st. 15, hen 45	1.15
	I. pt 10, cob 5	15
12.	Oranges 15, mockerel 15, G. Dust 5, steak 15, mdse. 5	55
	Milk 10, lemns 10, greas 15, p. stak 15	50
	Krout 15, E. soap 5, I. soap 5, eggs 20, snuff 10	55
13.	Eggs 18, tob. 5, vinegar 10, s. milk 5, I. pot 15	53
	Lard 25, sugar 25, sousage 10	60
14.	S. pot 10, milk 5, p. stak 15, butter 13, bonny 10, polish 10, sousage 15	78
15.	Eggs 28, s. meat 10, bannas 15, polish 10	63

1906.

Feb. 16.	Milk 5, s. pot. 10, h. b. steak 15, peaches 15	$0.45
	Bannas 15, eggs 18, onions 5	.38
17.	Cash 10, milk 10, s. pot 10, thred 5, h. beans 15, p. steak 15	.65
	Hominy 20, P. feet 10	.30
19.	Steak 15, s. pot 20, milk 5, flour 70, eggs 15, meat 10	1.35
20.	Bred 10, milk 10, l. beans 15, butter 30, lard 25, Flax 5	.95
21.	Eggs 15, brains 15, bannas 10, b. food 10	.50
22.	Cely 5, eggs 15, bred 5	.25
23.	Milk 5, P. steak 15, krout 5	.25
24.	P. steak 15, cheese 5, wood 10, tom. 15, butter 25, cob. 5	.75
21.	I. soap 5, bred 5, s. pot. 10, lard 25, sugar 25	.70
11.	Coffee 15, onions 5, eggs 15, mackerel 10, brains 10, s'uff 10, polish 10	.75
26.	P. feet 10, steak 15, eggs 15, fish 20, cob. 10, beans 15	.80
	Honey 20, bred 5, brains 20, sugar 10, bocn 15	.70
27.	Cheese 5, onions 5, steak 10, apples 5, butter 25, d opples 15, R. st. 15	.80
28.	Cracks 5, b. milk 5, lard 25, fish 20, honey 5, s. pot 10	.70
	Milk 5, oysters 10, apples 10	.25
	Paid	13.07

2277 Ex. Martin No. 3. (See p. 1417.) James D. Maher, Comm'r.

CHATTANOOGA, TENN., *March 31, 1906.*

Mr. Geo. W. Brown, bought of George Martin & Company, grocers. Telephone 652. Cor. Sixth and Broad streets.

1906.

Mch. 1.	Butter	.30
	Peaches 25, milk 10, p. st. 10's. milk 5	.50
2.	Milk 10, steak 10, vinegar 10	.30
3.	Oats 10, eggs 15, mackerel 15, milk 5, steak 10, peaches 25	.80
5.	Eggs 15, butter 25, ham 15, milk 10, powders 15	.80
	P. feet 10, hominy 10, steak 10, snuff 10	.40
	P. feet 10, eggs 15, milk 5	.30
6.	Fish 20, milk 5, greens 10, meat 10	.45
7.	B. milk 5, eggs 15, lard 25	.45
8.	Ham 20, bread 5, milk 5, peaches 15, kraut 10, p. steak 10	.65
9.	Beans 15, greens 10, milk 5, meat 10, milk 10	.50
10.	Eggs 15, beans 10, milk 10, steak 15, butter 30	.80
	Eggs 15, prunes 10	.25
12.	Apples 10, crackers 5, thread 5, milk 5, steak 20	.45
15.	Milk 5, eggs 15, greens 10, beans 10, prunes 10, steak 15	.65
16.	P. feet 10, milk 10, steak 15, eggs 15, lard 25	.75
17.	Milk 15, eggs 15, fish 20, corn 10, kraut 5	.65
19.	Milk 10, s. milk 10, bread 5	.25
		9.25
28.	Roast 25, bread 5	.30
	Paid	9.55

2278 Ex. Taylor No. 1. (See p. 1426.) James D. Maher, comm'r.

Sheriff's office, Hamilton County, Tennessee. J. F. Shipp, sheriff.

CHATTANOOGA, TENN., *Aug. 24th, 1904.*

Mr. THOMAS B. TAYLOR, *115 West 8th St., City.*

MY DEAR SIR: Reposing special confidence in your fidelity, integrity, and ability as an engineer, I have selected you to take charge of the engine, boiler, and machinery, on the day turn, at the county jail. The success of my administration will depend upon the integrity,

diligence, and sobriety of my appointees, all of which will be required and expected. I will reserve the right to cancel this appointment at my discretion, without let, hindrance, or restraint.

Hoping you can accept this appointment on the terms and conditions as above submitted, and that I may hear from you at once, I am,

Yours, very fraternally,

J. F. SHIPP.

2279 Ex. Taylor No. 2. (See p. 1429.) James D. Maher, comm'r.

Sheriff's office, Hamilton County, Tennessee. Jos. F. Shipp, sheriff.

To whom it may concern:

Know ye, that reposing special trust and confidence in the integrity, ability, and diligence of Thomas B. Taylor, of Hamilton County, Tennessee, I hereby appoint him special deputy, with the full power of a deputy sheriff, until the authority hereby conferred shall be revoked by me, which I reserve the right to do at any time.

Given under my hand at Chattanooga, Tennessee, the 1st day of September, 1904.

JOS. F. SHIPP,
Sheriff of Hamilton County.

2280 Ex. Taylor, No. 3. (See p. 1432.) James D. Maher, comm'r.

Hill City Lodge I. O. O. F.
Yourself and ladies are cordially invited to attend
an entertainment at Odd Fellows Hall,
Hill City, Monday evening,
March 19, 1906.

You are requested to bring one friend with you not a member of the order.

Ex. Taylor No. 3. (See p. 1432.) James D. Maher, comm'r.
(Address on envelope:) Mr. Tom Taylor, Chattanooga, T——. Court-house. Not at.
32. Try Eng. County Jail.
(Stamped.) Hill City, Tenn., Mar. 14, 9 a. m., 1906.

2281 Exhibit "Clark." Page 1726. James D. Maher, comm'r.

Sheriff's office, Hamilton County, Tennessee. Jos. F. Shipp, sheriff.

To whom it may concern:

Know ye, that reposing special trust and confidence in the sobriety, discretion, integrity, and diligence of J. C. Clark, of Hamilton County, Tennessee, I hereby appoint him a justice court officer, with the full power of a deputy sheriff.

The appointment and authority hereby conferred is, however, given conditioned upon habits of sobriety and conduct becoming a deputy sheriff.

I reserve the right to revoke this commission at any time.

Given under my hand at Chattanooga, Tennessee, the 3rd day of Sep., 1906.

J. F. SHIPP,
Sheriff of Hamilton County.

A 1 And afterwards, to wit, on the 4th day of November, A. D. 1907, the following entry appears of record, viz:

A 2 Supreme Court of the United States, October term, 1907.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
J. F. SHIPP ET AL. } No. 5, Original.

It is now here ordered by the court that Mr. James D. Maher, the commissioner appointed by this court to take and return the testimony in this cause, be, and he is hereby, allowed the sum of $800.00 in full for his compensation and expenses, and that said sum be paid by the complainant herein.

November 4, 1907.

(Endorsed:) Supreme Court of the United States. October term, 1907. No. 5, Original. Order fixing compensation of James D. Maher as commisioner herein. Filed Nov. 4, 1907.

A 3 And afterwards, to wit: On the 22d day of April, A. D. 1908, a motion for leave to take additional testimony was filed in the words and figures, following, viz:

A 4 In the Supreme Court of the United States, October term, 1907.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS. } No. 5. Original.

Motion for leave to take additional testimony.

A 5 In the Supreme Court of the United States, October term, 1907.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS. } No. 5. Original.

Motion for leave to take additional testimony.

The Solicitor-General appearing for and on behalf of the United States, moves the court to reopen the hearing of testimony in this

case and to reappoint Mr. James D. Maher as commissioner for the purpose of taking and returning additional testimony to the court in this behalf.

In support of this motion the Solicitor-General shows and represents to the court that under the original order of reference to the said commissioner the Government and the defendants took their testimony in the city of Chattanooga, Tenn., in the year 1907, and closed their case in June of that year; that said commissioner subsequently made his report as to the taking of testimony, which was opened, published, and filed pursuant to an order of court; that

A 6 while, since the taking of testimony was closed as aforesaid, the Government has made no further effort to find additional testimony, the Department of Justice recently and unexpectedly was informed that two persons who were not examined on the former hearing were eyewitnesses of part of the incidents connected with the lynching of the prisoner, Ed. Johnson, which is involved in this information, and could identify two of the defendants herein as connected therewith; that the department thereupon caused this matter to be inquired into through the office of the United States attorney for the Eastern District of Tennessee, and was advised by him that these two persons will so testify and will identify two of the defendants in question.

The Solicitor-General further represents and shows to the court that he is advised that these two parties did not previously make known their knowledge of these facts in reference to this matter on account of fear, and that there was no means by which the Government could have been previously advised as to the information which they possessed or could have obtained their testimony on the former hearing.

The Solicitor-General further represents and shows to the court that this application for leave to take additional testimony is not made for purposes of delay, but solely that justice may be done and all material evidence brought to the attention of the court.

A 7 He therefore prays that the taking of testimony may be reopened, and that the said James D. Maher may be reappointed as commissioner, with the same powers as under his original appointment, and may be directed to proceed at an early and convenient date to the city of Chattanooga, Tenn., there to take the testimony of the two witnesses in question, together with any rebuttal testimony which any of the defendants may desire to offer in that behalf, or further testimony which may be rendered necessary in behalf of the Government by reason of such rebuttal evidence, if any, and to report such additional testimony to the court.

Respectfully submitted.

HENRY M. HOYT,
Solicitor-General.

Notice of submission of motion to take additional testimony.

Attorneys for Defendants:

Please take notice that on the day of , 1908, at the opening of the court, or as soon thereafter as counsel can be heard, a motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of said court thereon.

HENRY M. HOYT,
Solicitor-General.

A 8 (Endorsed:) In the Supreme Court of the United States. October term, 1907. No. 5. Original. The United States of America, complainant, *v.* John F. Shipp and others, defendants. Motion for leave to take additional testimony. Filed April
A 9 22, 1908, and afterwards, to wit, on the 4th day of May, A. D. 1908, an answer to the motion for leave to take additional testimony was filed in the words and figures following viz:

A 10 In the Supreme Court of the United States, October term, 1907.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS. } No. 5. Original.

Answer to motion for leave to take additional testimony.

A 11 In the Supreme Court of the United States, October term 1907.

THE UNITED STATES OF AMERICA,
complainant,
v.
JOHN F. SHIPP AND OTHERS,
defendants. } No. 5, Original.

Answer to motion for leave to take additional testimony.

The defendants Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, Fred. Frawley, and Marion Perkins, appearing by their attorneys, Judson Harmon, Robert Pritchard, James J. Lynch, M. H. Clift, and Robert B. Cooke; the defendants T. B. Taylor and George Brown, appearing by their attorney, T. W. Stanfield; the defendant Jeremiah Gibson, appearing by his attorneys, Clift & Cooke; the defendant Joseph Clark, appearing by his attorneys, Spears & Lynch; the defendants Claude Powell, Nick Nolen, Chas. J. Powell, Bart Justice, John Jones, Henry Padgett, William May, John Varnell, and Alfred Handman, appearing by their attorneys, Lewis Shepherd and Shepherd & Fleming; the defendants "Sheenie" Warner and Luther Williams, appearing by their attor-

ney, G. W. Chamlee; the defendant William Beeler, appearing by his attorneys, Ford & Chamlee and G. W. Chamlee; the defendants W. J. Cartwright and R. F. Cartwright, appearing by their attorneys, S. P. Maddox and John H. Early; the defendant Frank Ward, appearing by his attorneys, G. W. Chamlee and John A. Hood;
A 12 and the defendant William Marquette, appearing by his attorney, Joe V. Williams, answering the petition of the Solicitor-General for leave to take additional testimony in this case say:

1. It is true that much proof has been taken in this case both by the Government and the defendants, and the defendants closed their proof in June, 1907; the report of the commissioner has been made and the testimony opened, published, and filed. It is likewise probably true that the Government made no effort to find additional evidence after the closing of the testimony.

2. These defendants take it for granted that the statement that the Department of Justice has received the information set out in the motion is true. But they call the attention of the honorable court to the vague and meagre statements of the motion upon this subject, The names of the two persons who are supposed to have been eye witnesses of "part of the incidents connected with the lynching of the prisoner, Ed. Johnson," are not given. The nature of the "part of the incidents" they saw is not stated. The names of the "two defendants" whom it is supposed these witnesses "could identify as connected therewith" are not given.

3. While these defendants submit that they are entitled to be furnished with the names of the two witnesses, they do not insist upon this because the motion suggests that "these two parties did not previously make known their knowledge of these facts in reference to this matter on account of fear." Defendants aver that nothing whatever has occurred, so far as their knowledge or information ex-
A 13 tends to support the suggestion that any concealment of facts has been induced by fear of any sort.

4. But there are many defendants to the information in this case and many of them have separate defenses and the defendants are not all represented by the same counsel. The defense has been onerous and expensive. It is inferrible from the statements of the motion that only two defendants will be interested in the additional testimony sought to be taken. To save the expense of the attendance of all the defendants and the attorneys for all of them, these defendants respectfully submit that they are entitled to be furnished with the names of the two defendants who will be affected by the proposed additional testimony. After the testimony of the two witnesses in question shall have been taken, the defendants affected thereby should have reasonable time within which to collect and adduce evidence in rebuttal.

Defendants therefore offer no resistance to the motion further than to insist that before it is allowed they should be furnished with the names of the two defendants whom it is proposed to identify by the

witnesses, and that such additional time be allowed as may be necessary for collecting and adducing rebuttal evidence.

Respectfully submitted.

JUDSON HARMON,
ROBERT PRITCHARD,
JAMES J. LYNCH,
M. H. CLIFT,
R. B. COOKE,

A 14 Attorneys for Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, Fred Frawley and Marion Perkins.

T. W. STANFIELD,
Attorney for T. B. Taylor and Geo. Brown.

CLIFT & COOKE,
Attorneys for Jeremiah Gibson.

WILLIAM D. SPEARS,
JAMES J. LYNCH,
Attorneys for Joseph Clark.

LEWIS SHEPHERD,
T. P. SHEPHERD,
M. A. FLEMING,
Attorneys for Claude Powell, Nick Nolen, Chas. J. Powell, Bart Justice, John Jones, Henry Padgett, Wm. May, John Varnell, and Alfred Handman.

G. W. CHAMLEE,
Attorney for Sheenie Warner and Luther Williams.

G. W. CHAMLEE AND
FORD & CHAMLEE,
Attorneys for William Beeler.

JOHN H. EARLY,
S. P. MADDUX,
Attorneys for W. J. Cartwright and R. F. Cartwright.

G. W. CHAMLEE,
JOHN A. HOOD,
Attorneys for Frank Ward.

JOE V. WILLIAMS,
Attorney for William Marquette.

A 15 (Endorsed:) In the Supreme Court of the United States, October term, 1907. No. 5, Original. The United States of America, complainant, v. John F. Shipp and others, defendants. Answer to motion for leave to take additional testimony. Filed May 4, 1908.

A 16 And afterwards, to wit, on the 4th day of May, A. D. 1908, the following entry appears of record, viz:

A 17 THE UNITED STATES OF AMERICA, complainant, *vs.* J. F. SHIPP ET AL. } No. 5, Original.

Mr. Solicitor-General Hoyt, of counsel for the complainant, submitted to the consideration of the court a motion for leave to take additional testimony herein, and for the reappointment of James D. Maher as commissioner to take and return said testimony.

May 4, 1908.

A 18 And afterwards, to-wit, on the 18th day of May, A. D. 1908, the following entry appears of record, viz:

A 19 Supreme Court of the United States. October term, 1907.

THE UNITED STATES OF AMERICA, complainant, *vs.* J. F. SHIPP ET AL. } No. 5, Original.

On consideration of the motion for leave to take additional testimony herein, and that James D. Maher be appointed commissioner to take the same, it is now here ordered by the court that said motion be, and the same is hereby, granted, due notice of the names of the particular defendants affected by the proposed evidence to be given and leave being granted to give evidence in rebuttal.

May 18, 1908.

(Endorsed:) Supreme Court of the United States. October term, 1907. No. 5, Original. Order to take additional testimony and appointing commissioner. Filed May 18th, 1908.

A 20 And afterwards, to-wit, on the 13th day of October, A. D. 1908, the following entry appears of record, viz:

A 21 THE UNITED STATES OF AMERICA, complainant, *vs.* J. F. SHIPP ET AL. } No. 5, Original.

Mr. Solicitor-General Hoyt, of counsel for the complainant, presented the reports of the commissioner appointed to take additional testimony herein, and submitted an oral motion as to the matter of his compensation.

October 13th, 1908.

A 22 And on the same day, to-wit, on the 13th day of October, 1908, the following entries appear of record, viz:

A 23 THE UNITED STATES OF AMERICA, complainant, *vs.* J. F. SHIPP ET AL. } No. 5, Original.

On motion of Mr. Solicitor-General Hoyt, of counsel for the complainant, it is ordered that the additional testimony taken herein be opened, published, and filed.

October 13th, 1908.

A 24 THE UNITED STATES OF AMERICA, complainant, *vs.* J. F. SHIPP ET AL. } No. 5, Original.

On motion of Mr. Solicitor-General Hoyt, of counsel for the complainant, it is ordered by the court that the information herein be, and the same is hereby, dismissed as to the defendants, Paul Pool, T. B. Taylor, William Beeler, John Jones, Marion Perkins, C. A. Baker, Claude Powell, Charles J. Powell, A. J. Cartwright, R. F. Cartwright, John Varnell, Joseph Clark, Fred Frauley, Paul or "Sheenie" Warner, Alfred Hammond, William Marquette, and George Brown.

October 13th, 1908.

A 25 And on the same day, to-wit, the 13th day of October, A. D. 1908, the reports of the commissioner were filed in the words and figures following, viz:

A 26 Supreme Court of the United States, October term, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT, *v.* J. F. SHIPP ET AL. } No. 5. Original.

To the Honorable the Supreme Court of the United States:

The undersigned commissioner appointed by an order entered in this cause on the 18th day of May, 1908, to take and return such additional evidence as the parties to said cause should produce, respectfully reports to the court that pursuant to the said order he proceeded to the city of Chattanooga, Tennessee, on the 28th day of June, 1908, and opened the commission conferred on him in the United States court room in said city on the first day of July, 1908, at 10 o'clock a. m., and, the counsel for the respective parties being present, proceeded to execute the said commission on that day and the day following, on which last-named day the parties not offering any more testimony the commission was closed. The said commission was

executed by receiving the testimony of the several witnesses named in the said testimony, who were sworn to testify to the truth, the whole truth, and nothing but the truth before giving their evidence, and the testimony so given by them was taken down by a stenographer in the presence of the undersigned and is herewith submitted.

A 27 Said testimony, comprising 175 typewritten pages, has been deposited with the clerk of this honorable court.

Respectfully submitted.

JAMES D. MAHER,
Commissioner.

(Endorsed:) Supreme Court U. S. October term, 1908. No. 5, Original. The United States of America, complainant, vs. J. F. Shipp et al. Report of commissioner as to additional testimony taken under order of May 18, 1908. Filed October 13th, 1908.

A 28 Supreme Court of the United States, October term, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
J. F. SHIPP ET AL. } No. 5. Original.

To the Honorable the Supreme Court of the United States:

Pursuant to the order of this honorable court entered on the 18th day of May, 1908, appointing the undersigned as commissioner to take and return additional testimony in the above entitled cause, I beg leave to state that I proceeded to the city of Chattanooga, Tennessee, on June 28th, 1908, and returned to the city of Washington on July 3d, 1908, and that my expenses were as follows:

Railroad and Pullman fare	$41.50
Meals en route	3.25
Hotel bill	16.95
Cab hire	2.20
Express Co. charges on testimony	.45
Total	$64.35

Respectfully submitted.

JAMES D. MAHER,
Commissioner.

(Endorsed:) Supreme Court U. S. October term, 1908. No. 5, Original. The United States of America, complainant, vs. J. F. Shipp et al. Report of commissioner as to expenses in taking additional testimony under order of May 18, 1908. Filed Oct. 13th, 1908.

A 29 And on the same day, to-wit, on the 13th day of October, A. D. 1908, a motion to dismiss as to certain defendants was filed in the words and figures following, viz:

A 30 In the Supreme Court of the United States, October term, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.
No. 5, Original.

Motion of the Attorney-General to dismiss as to certain defendants.

A 31 In the Supreme Court of the United States, October term, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOHN F. SHIPP ET AL.
No. 5, Original.

Motion of the Attorney-General to dismiss as to certain defendants.

The Attorney-General, on behalf of the United States, moves that the information herein be dismissed as to the defendants Paul Pool, T. B. Taylor, William Beeler, John Jones, Marion Perkins, C. A. Baker, Claude Powell, Charles J. Powell, A. J. Cartwright, R. F. Cartwright, John Varnell, Joseph Clark, Fred Frauley, Paul or "Sheenie" Warner, Alfred Hammond, William Marquette, and George Brown, and that they be discharged from their respective recognizances entered into pursuant to an order of this honorable court made herein on the 21st day of January, 1907, without

A 32 prejudice, however, to the right of the United States to prosecute this proceeding as to each and all of the other defendants herein with the same force and effect as if the proceeding against the above-named defendants were not dismissed.

Testimony has been taken and the cases of all parties closed. All of the testimony has been reported by the commissioner, printed, published, and filed pursuant to an order of the court.

Efforts to serve Paul Pool with process in this proceeding have been unsuccessful. He left Chattanooga soon after the lynching and has never since been located, according to our information.

The proof fails to disclose any evidence implicating defendants T. B. Taylor, William Beeler, John Jones, Marion Perkins, C. A. Baker, Claude Powell, Charles J. Powell, A. J. Cartwright, R. F. Cartwright, or John Varnell in the acts complained of in the information.

The defendant John Jones is not the John Jones which the Government witnesses testify to having seen in the lynching party. The witnesses stated positively that he was not the same party (pp. 442, 604).*

Testimony as to the defendants, Joseph Clark, Fred Frauley, Paul or "Sheenie" Warner, Alfred Hammond, William Marquette, and George Brown, is deemed insufficient to justify further prosecution. The proof as to each of these last-named defendants is referred to below:

A 33 Joseph Clark, a deputy sheriff. The only evidence against Clark was given by Joe Franklin (colored), as follows (p 522):

Q. Did you see any of the deputy sheriffs in the crowd?

A. I saw one I knew.

Q. Who was he?

A. Joe Clark.

Q. Where was he?

A. He was in the first bunch. (Meaning the crowd closest to Johnson when he was taken from the jail.)

Q. What was he doing?

A. He either had a shotgun, or had a stick, I don't know which, in his hand.

Upon cross-examination the witness was indistinct as to what crowd Clark was with. He testified:

Q. * * * Which bunch was he in? (A pause.) You know which bunch he was in without stopping to study, do you not?

A. No, sir; I don't.

Q. You do not know which bunch he was in?

A. I know he was in the crowd.

Q. You do not know whether he was in the first, second, or third bunch, do you?

A. I am not positive.

Q. You are not positive whether he was in the fourth or fifth bunch? Was he not behind the whole crowd?

A. I am not positive.

A 34 Q. About what part of the crowd was he in?

A. I am not positive.

Q. Haven't you any idea about it?

A. I am not positive.

Q. Haven't you any idea where he was?

A. I know he was there, but I kept no record of exactly where everybody was.

Q. You have not the slightest idea, and you can not give the court the slightest idea as to what part of that crowd he was in, can you?

A. I know he was in the crowd.

Q. Whereabouts?

A. I couldn't tell you. I know he was on Walnut street.

Q. All you can tell is that you saw him on Walnut street?

A. Yes, sir.

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*All page figures herein refer to pages of original record of testimony filed in the United States Supreme Court.

Q. And that is as near as you can describe his position there that night?

A. In the crowd; yes, sir.

Q. You saw him on Walnut street?

A. Yes, sir.

Q. But you will not say whether he was in the first, second, third, fourth, or fifth bunch?

A. I will not.

Q. You will not say whether he was in the front rank, leading the charge, or in the rear rank, coming up with the stragglers?

A. No, sir.

Q. You have not the slightest idea which he was in?

A 35 A. Not now. (Pp. 675, 676.)

Q. I am asking you if you have any recollection right now as to where that man was?

A. No, sir; I have not.

Q. You have not the slightest recollection?

A. No, sir. (Pp. 687, 688.)

Fred Frauley, a deputy sheriff. There is nothing tending to show that Frauley was at the jail when the lynchers were there or was present at the lynching or had anything to do with the lynching party. The only evidence unfavorable to him was given by Press Walker (colored), cook at the jail at the time of the lynching. He testified:

Q. Did you hear anything said about anything the Supreme Court had done?

A. Yes, sir; I heard that.

Q. Who was talking about that?

A. Well, Captain Brown told me that a telegram had come, which I had seed it, that there was one come there. A boy brought something there. They said it was a telegram. Of course I didn't read it.

Q. You did not see the telegram yourself?

A. No, sir.

Q. That was before you left?

A. Yes, sir.

Q. You do not know what was in it?

A. No, sir; I couldn't say that.

Q. Did you hear any of the deputies say anything about any telegram?

A 36 A. Well, after so long a time, Captain Shipp says, "Now what will you do?" just so, and Mr. Frawley or Mr. Brown said, "Now, you are the sheriff. It is up to you about what to do." They said, "You are the sheriff."

Q. What time did you go away?

A. Well, I think it was near 3 o'clock. (pp. 290, 291.)

Paul or "Sheenie" Warner. This man sets up an alibi (pp. 830-869), and the only evidence tending to show that he participated in plans for the lynching or the lynching is the following, given by A. J. Ware, an intelligent witness for the Government:

Q. Who were the men that brought out Johnson?
A. I do not know, sir.
Q. Did you recognize them at that time?
A. Well, I thought I recognized one, but I would not make affidavit that I did.
Q. Have you an impression about it?
A. What is that?
Q. Have you a recollection as to whom you recognized?
A. I thought I recognized a young man by the name of Warner.
Q. What is he generally called? Has he a nickname, do you know?
A. "Sheeny" Warner.
Q. How long have you known him?
A. I have known him for a number of years, but, as I told you, I would not swear it was him because his face was blackened to some extent.
A 37 Q. His face was blackened?
A. Yes. I could not recognize him for certain, and would not say it was him.
Q. Did you speak to him?
A. No, sir. I did not speak to any one. (p. 412.)

By Mr. CHAMLEE:

Q. Relative to Mr. Warner, if you saw him at all that night—the man you referred to, you say, was a man that you could not recognize? You said that he had his face blackened, did you?
A. Yes, sir; there was smut or something on the face of the man.
Q. There was something on the face of the man you referred to, and you could not say that it was Mr. Warner at all, and do not say it now?
A. I would not attempt to say it was him, positively; no, sir.
Q. This was a dark night, and it was dark at the place where you saw him?
A. No; it was light where I saw him. I saw him in the jail lobby.
Q. Still, you do not attempt to say it was Mr. Warner?
A. No, sir. (p. 424.)

ALFRED HAMMOND. This man sets up an alibi (pp. 623–677), and the only evidence against him is that of John N. Stonecipher, as follows:

A. I went in (saloon) and Padgett had the Morning Times, and the first word he said, he said: "This damn paper has
A 38 printed a lie about this lynching." I said, "How do you know it is a lie, Henry?"
Q. What did he answer?
A. Well, he told me he was there.
Q. Did anything further occur in that conversation? What was the condition of his shoes, if you noticed?
A. And just as he said that, Alf. Handman came in.
Q. Is he one of the defendants in this case?
A. Yes, sir; I suppose so.

Q. He came in.

A. Yes, sir; and Henry just turned up his shoe this way. He says, "Why, I haven't got the mud off my shoes yet." Alf. says, "I cleaned mine before I come."

Q. Was anything further said between you at that time?

A. And Henry says, "We did the nigger up all right, didn't we?" Alf. said, "You bet we did." That was all that was said (pp. 267, 268).

It is denied these statements were made (pp. 647, 1038).

The identification of Hammond in this connection is not strong. Stonecipher did not know Hammond at the time, but, upon asking Padgett, was informed that it was he (p. 271). He has not seen Hammond since the occurrence (p. 268).

William Marquette. The only evidence connecting him with the lynching is that of Joe Franklin (colored). He stated that
A 39 when the lynchers came out of the jail and went up the street to the bridge where the lynching occurred he saw Marquette in the fourth or fifth crowd behind the one which had Johnson, about 50 yards behind Johnson, but that he never saw him do anything and never saw him near Johnson at all (pp. 520, 600–602).

From this it appears that if Marquette was present at the lynching it was not as a participant.

Marquette sets up an alibi which he supported with considerable testimony (pp. 776–828).

George Brown, a deputy sheriff. Brown was the day jailor (pp. 286, 1295). His official duties were entirely at the jail and commenced at 6 in the morning and ended at 6 at night (pp. 1295, 1296). He had rooms at the jail and spent some of the nights there (p. 286). But about half of the time he went to Hill City, about a mile and a quarter from the jail, when his duties were finished at night (pp. 1292, 1297, 1300). He left the jail at 6.15 the night of the lynching and went to Hill City, where he remained all night (pp. 1298, 1354, 1360, 1361, 1379, 1397, 1402). There is no evidence to contradict these facts.

The only evidence which could be construed as showing that Brown had knowledge that there would be a lynching or that he aided in preparing the jail so that the lynchers would not be opposed in getting Johnson is that relating to the conversation between Shipp,
Frauley, and Brown, above set out, and the testimony of
A 40 Waller, a prisoner at the jail, that on the afternoon of the day of the lynching he heard Brown, in reply to a question asked by Roach (another prisoner), if he was looking for a mob that night, say "it looked pretty warm outside" (pp. 450, 487). Brown denies making this statement (p. 1307).

A number of witnesses testified to Brown's good character (pp. 1351, 1362, 1379, 1380, 1385, 1390, 1406, 1418, 1423).

Upon the above state of the evidence it clearly appears to be the duty of the Attorney-General to move to dismiss the information as

to the defendants herein enumerated, and accordingly this motion is submitted to the court after due notice to and service upon all counsel in the cause.

CHARLES J. BONAPARTE,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

OCTOBER, 1908.

A 41 (Endorsed:) In the Supreme Court of the United States, October term, 1908. No. 5, Original. The United States of America, complainant, *v.* John F. Shipp et al. Motion of complainant to dismiss as to certain defendants. Filed Oct. 13, 1908.

A 42 And on the same day, to wit, on the 13th day of October, A. D. 1908, the additional testimony was filed in the words and figures following, viz:

A 43 In the Supreme Court of the United States, October term, 1906.

THE UNITED STATES OF AMERICA, complainant, *vs.* JOHN F. SHIPP ET AL DEfendants.	No. 5, Original.

Testimony taken before James D. Maher, esq., commissioner, July 1 and 2, 1908.

Reported by Boyd Thompson, court stenographer, Chattanooga, Tenn.

(Indorsed:) Office Supreme Court, U. S. Filed Oct. 13, 1908. James H. McKenney, clerk.

1 In the Supreme Court of the United States, October term, 1906.

THE UNITED STATES OF AMERICA, complainant, *vs.* JOHN F. SHIPP ET AL DEfendants.	No. 5, Original.

Testimony taken before James D. Maher, esq., commissioner.

CHATTANOOGA, TENN., *July 1, 1908.*

The further taking of evidence in the above-styled case was begun on this, the first day of July, 1908, in the federal court room, in Chattanooga, Tenn., before James D. Maher, esq., commissioner, in the presence of Jas. R. Penlan, U. S. Attorney, representing the

complainant, and the various attorneys representing the defendants, which testimony was taken down in shorthand and transscribed by Boyd Thompson, stenographer.

HENRY A. LEE (colored), a witness for the complainant, was duly sworn and testified as follows:

Direct examination questions by JAS. R. PENLAN:

Q. State your full name.

2 A. Henry A. Lee.

Q. What is your age?

A. Forty-five; that is, on my coming birthday, on the 3rd of this month.

Q. Where do you live, Henry?

A. Chattanooga, Tenn.

Q. How long have you lived in Chattanooga?

A. Thirty years.

Q. Where did you come from when you came to Chattanooga?

A. Sequatchie Valley, Bledsoe County, Tenn.

Q. Where in Chattanooga do you now live?

A. I live on Watkins street, No. 1 Ross Town.

Q. What business did you follow, and do you now follow, Henry?

A. I have been in the furniture business about 10 years.

Q. The furniture business?

A. Yes, sir.

Q. Who with?

A. I was with Mr. George T. Balfour about six years, and I have been with different forms in Chattanooga all the time.

Q. Are you a marired man?

A. Yes, sir.

Q. What family have you?

A. I have two grown daughters.

Q. Is your wife living?

A. Yes, sir.

Q. Do you remember the occasion of the lynching of Ed Johnson in Chattanooga sometime ago?

A. Yes, sir.

3 Q. Were you living here in Chattanooga at that time?

A. Yes, sir.

Q. I will ask you to state whether you were personally acquainted with Ed. Johnson?

A. No, sir.

Q. Where were you on the night he was taken out of the jail and lynched, as alleged?

A. Where was I at the time, sir?

Q. I asked you where you were that night. Were you in Chattanooga?

A. Yes, sir.

Q. Where were you living at that time?
A. #1017½, in the rear of 10th street.
Q. What part of the city is that in?
A. Back over east.
Q. Were you at home that night all night?
A. No, sir.
Q. Where did you go?
A. We went to church.
Q. Where at?
A. Corner of Chestnut and 6th street.
Q. When you say, "We went to church," who do you mean went to church?
A. Myself and my wife, or my wife and myself.
Q. Well, now, after church where did you go?
A. After church we started home.
Q. Well, now, if anything occurred on your way home to attract your attention——
A. Yes, sir.
Q. —— tell what it was, and don't talk in too fast.
4 A. Yes, sir.
Q. Just in a rather slow manner, tell the stenographer here what occurred, and where.
A. Well, just after we come out of church we went up 6th street to Market street. We stood on the corner of Market, and Market and 6th street, waiting for a car, on the far side, east 9th street car. And while we were standing there, why, there was two white men come angling across, it seemed like, coming out of Mr. Light's bar room; and he said to me, "Good morning, old man;" and I said, "Go ahead, or I'll make it good night with you," or something like that. They were traveling very swiftly, going up 6th street.
Mr. LYNCH. We object to that.
Q. Don't tell the conversation; just leave that out Mr. Thompson. Don't tell any conversation that occurred between you and anybody else. But two men passed you; and state what else occurred.
A. Well, I was looking at them. My attention was called to them; and I saw an excitement on the hill up there; it seemed like excitement, people passing and repassing very swiftly.
Q. What direction was that in?
A. That was east, right across Market street, going up 6th *6th* street.
Q. Was it towards the jail, east, from where you were?
A. Yes, sir; it was up that way.
Q. Well, what was the excitement, now, that you saw?
A. Well, we were waiting for the car. We were standing still
5 waiting for the car, after those gentlemen passed me; and I said to my wife——
Q. Well, you needn't state what you and your wife said; but what you saw, if any disturbance. You started to tell something.

A. I saw an excitement up there, the men passing and repassing—seemed to be an excitement at that time of the night.

Q. About how many men did it look like there were?

A. Well, you couldn't tell. You see, from where I was standing, you could just see them pass and repass, this way [indicating].

Q. Well, what did you do, if anything?

A. Me and my wife took a notion to walk up that far and see.

Q. Well?

A. And when we got up; we took our time going up 6th street; and after we got near the corner of 6th and Walnut, why, my attention was called to the noise over on the right; and I looked, and I saw a crowd of men, a big crowd, coming right towards me. The only thing I did was to run up to Mr. Cain's house, under the magnolia tree, and squat down; and they come on passing by.

Q. The crowd went passing by?

A. Yes, sir; right up Walnut street.

Q. Which way were they going with reference to the county bridge across the river?

A. Right straight towards it, over Walnut street hill.

Q. In whose yard were you and your wife at that time?

A. Mr. Johnnie Cain's.

Q. Cain?

6 A. Yes, sir; on the corner of 6th and Walnut.

Q. How did you get into the yard?

A. We just walked up the steps; it was only about 2 flights of steps. We made it up there and hid ourselves.

Q. Well, when you got up to the magnolia tree, about how far was that from the street, where the crowd passed along; about how far?

A. The middle of the street?

Q. Yes.

A. Somewheres about 40 feet, I suppose; just making a rough guess; I couldn't exactly tell the distance.

Q. About how many people would you say were in the crowd that was passing that street at that time, Henry?

A. Well, there was about—well, the men that was in front, only 2 or 3 members; that was the ones that had Ed. Johnson in the center; and the rest 2 or 3 deep. It seemed to be about 75, or probably more.

Q. Well, did you see them have anybody in charge——

A. Yes, sir.

Q. ——as it appeared to you?

A. Yes, sir; I seen a colored man they had.

Q. State whether or not there were lights along the street there at that place.

A. Right on the corner; right on the corner of 6th and Walnut, in the center of the street, where the car makes the bend, is a big electric light there.

Q. How far from that light was the point where they passed you at Cain's yard; about how far?

A. Well, about 45 feet, I suppose.

Q. Now, if there was anybody in that crowd that you recog-
7 nized, Henry, tell who it was.

A. Yes, sir; I recognized two men.

Q. Yes.

A. They were in the rear.

Q. In the rear?

A. Yes, sir.

Q. Well, tell the court and the stenographer, now, who they were.

A. I took that man [indicating] to be one of them, Mr. Galloway.

Q. Mr. Galloway?

A. Yes, sir.

Q. Matt Galloway?

A. Yes, sir.

Q. Where was he in reference to this crowd?

A. He was in the rear of the crowd.

Q. In the rear of the crowd?

A. Yes, sir.

Q. How long have you known Matt Galloway?

A. Oh, I have known him around here for 3 or 4 years; probably longer than that.

Q. Was anything said by him or anybody else as the crowd passed?

A. I heard a voice—I didn't know who said it—but I heard a voice, kinder gross, that spoke and attracted my attention that way. It said, "Don't talk so loud; we'll wake up the neighbors round here," or something like that. And so I looked back there, and I called my wife's attention to those two men that I seen.

Q. If I understand you, the talking is what called your attention to Galloway?

8 A. Yes, sir. I was a little excited, you know, being in that place at that time.

Q. Well, what was the talking that he replied to when he said, "Don't talk so loud; you'll wake up everybody?"

A. "You'll wake up everybody round here" is the way I understood it. I don't know who it was, but my attention was called to it when I heard that voice.

Q. Do you know who was doing the first talking, or what was said?

A. The first talking I heard, it seemed to be the colored man that was whining and crying and said, "I didn't do it! I didn't do it!" I didn't pay any attention to that at all; and I heard the gross voice and I looked back in the rear and I seen them and called my wife's attention to them, and she seen them with me.

Q. Well, who was the other man?

A. Why, I took him to be Mr. Taylor; it was Mr. Taylor.

Q. Which Taylor?

A. It isn't that one [indicating].

Q. Not that one?

A. No, sir; he is a Mr. Taylor, too. This was Mr. J. E. Taylor.
Q. J. E. Taylor?
A. Yes, sir.
Q. Where does he live? Do you know J. E. Taylor?
A. Yes, sir.
Q. Where does he live?
A. At Sherman Heights.
Q. He lives at Sherman Heights?
A. Yes, sir.

9 Mr. PENLAN. Now, I just want to ask for information. Gentlemen, he is not one of the defendants, J. E. Taylor? I don't know.

DEFENDANTS' ATTORNEYS: No, he is not.

Mr. PENLAN. I haven't the list of names before me; but I don't think he is.

Maj. CLIFT. He is not one of them.

The COMMISSIONER. T. B. Taylor is the one, for your information.

Mr. STANFIELD. Do you admit this is not the man that was there?

Mr. PENLAN. I'll admit that he is not the man the witness says he saw.

Mr. STANFIELD. I want the record to show that he says this defendant is not the man he saw.

Mr. PENLAN. I am perfectly willing for the record to show that.

Mr. STANFIELD. Stand up, Mr. Taylor.

(T. B. Taylor here rose to his feet, and was pointed out by the attorney.)

Question by T. W. STANFIELD:

Q. Do you admit that he is not the man you saw there?

Mr. PENLAN. I'll admit that the witness says he is not the man. Of course, I don't know myself.

Questions by J. R. PENLAN:

Q. Was there anybody else, Henry, that you knew in the crowd? You have named two.

10 A. I can't pick a solid man out outside of those two; and I wouldn't have done that if my mind hadn't been attracted down that way.

Q. By the talking?

A. Yes, sir. I didn't pay any attention till I heard this grossly voice, and I looked down and saw those two.

Q. What did you do after the crowd passed you, Henry?

A. Why, we staid right where we were until the present—we didn't see anybody coming—we were watching there—we staid until we couldn't hear any more footsteps over the hill; and we got out then, and we decided to walk, and we caught a kinder quickstep and went down Georgia avenue, and went out Georgia avenue to McCallie avenue, and went out McCallie avenue out to home.

Q. You didn't follow the crowd on towards the bridge, then?

A. No, sir; no, sir.

Q. You went direct home?
A. Direct home; as straight as we could go.
Q. When did you first hear of the fact that Johnson was said to have been lynched?
A. The next morning.
Q. The next morning?
A. Yes, sir.
Q. You didn't know the full meaning or purpose of the crowd that night, and not until the next morning, then?
A. I was under the impression what it was; of course I could not know, and come right out and say I seen them and knowed what it was. I seen them have the colored man, all right.

11 Q. Still, you didn't know who it was or what they were going to do?

A. No, sir; I didn't. They had a colored man, and he was begging and whining and crying kinder.
Q. Well, is there any other fact, now, that you know about the lynching of Ed. Johnson?
A. That's all.
Q. That is all you know?
A. Yes, sir.

Cross-examination, questions by J. J. LYNCH:

Q. You say you were born and raised in Bledsoe County, Tenn.?
A. Yes, sir.
Q. What part of Bledsoe County?
A. Up in Sequatchie Valley.
Q. I meant what is the post-office?
A. Well, Orm's store it was then. I was quite a child when I left.
Q. When did you leave there?
A. Oh, I was quite a child.
Q. Have you lived here ever since?
A. Yes, sir; I came here in '79.
Q. Have you ever had any trouble in Chattanooga?
A. Well, nothing in particular.
Q. Have you had anything in general?
A. No, sir.
Q. Have you ever been arrested?
A. Oh, several times; yes, sir; I suppose——

Q. Tell us how many times, or a few of the times, you have 12 been arrested.

A. Well, that man there [indicating] knows that I was arrested. I was arrested a while back about a sewing machine.
Q. What about that?
A. Well, I bought it, and paid for it nearly all, and he tried to take it; and I hid the machine so he could not get hold of it, or take it; and he had me arrested.
Q. What was it, larceny?

A. No, sir; it said "H. and P." I didn't know what it was. I was the one that waived the court myself.

Q. What else have you been arrested for besides being too familiar with a sewing machine?

A. Well, I was arrested once at Miller Brothers. I bought some scrap iron from Mr. McFadden; and he had me arrested. I didn't fill out the contract.

Q. How long did he keep you in jail that time?

A. Not any.

Q. What Miller was it?

A. Miller Brothers—Mr. McFadden.

Q. He was the man that had you arrested charged with stealing the scrap iron?

A. No, sir; the scrap iron was in the basement, and because I didn't take it all away he had me arrested.

Q. Charged you with larceny?

A. No, sir.

Q. What was it he charged you with?

A. I don't know what it was. It was just under the agreement that I was to pay so much for the scrap iron; and I
13 paid half of it down, and I didn't come back, and he had me arrested. I wouldn't call it larceny.

Q. What else have you been arrested for besides the scrap-iron scrape and the sewing-machine affair?

A. I don't remember anything else. The records will show, I guess.

Q. I know that; but have you been arrested so often that you can't remember the times?

A. No, not particularly. I don't think I have been arrested so many times I can't remember it.

Q. Give us some of the other times you have been arrested, then.

A. I don't remember no more right now.

Q. You don't remember no more right now?

A. No, sir. Arrested?

Q. Yes.

A. Let's see——

Q. You worked for M. J. O'Brien here once, didn't you?

A. Yes, sir.

Q. How long did you work for him?

A. About 6 years.

Q. How many times were you arrested while you worked for him?

A. Narry time.

Q. You were not arested one time?

A. No, sir.

Q. You were the man that worked for M. J. O'Brien?

A. Yes, sir; I worked for him in the retail department.

Q. And you can't remember any other time you have been arrested?

A. No, sir.

14 Q. Now, when did you first tell this story you have told here to-day, and to whom did you tell it?

A. I told it to the State's attorney, Mr. Stanford, or whatever his name is, in Knoxville.

Mr. PENLAN. Judge Sanford?

A. Yes, sir.

Q. When did you tell it to him?

A. I wrote him a letter about it.

Q. When did you write him the letter?

A. It has been several months ago.

Q. You just voluntarily wrote him the letter?

A. Yes, sir.

Q. You knew when they had this investigation here last year, didn't you?

A. Yes, sir.

Q. You kept up with the investigation, and read the papers, while it was going on?

A. Not particularly; no, sir.

Q. Still, you knew it was going on?

A. I was up here once; yes, sir.

Q. You were up here, sitting back there in the crowd?

A. I was up here once.

Q. But you didn't go to Mr. Sanford and tell him?

A. That I was up here?

Q. You didn't go to him and tell him what you have told here about it while they were investigating it?

A. No, sir; I did not.

Q. You didn't go and tell him?

A. No, sir.

15 Q. But afterwards you concluded to tell this story, and you wrote him about it?

A. I thought it was wrong for me to keep anything like that.

Q. You didn't think it was wrong during all the months they were investigating the case here, did you?

A. Wrong?

Q. You didn't think it was wrong for you to conceal it during all the time they were investigating the case, did you?

A. Under the circumstances, I did; yes, sir.

Q. You thought it was wrong?

A. Yes, sir.

Q. Why didn't you tell it?

A. I was afraid.

Q. There wasn't any harm done to anybody else that told anything here, was there?

A. I notice all the rest of them got away, too.

Q. There were hundreds of witnesses that came here and testified, and they continue to live right here in the city of Chattanooga. In fact, was anybody ever bothered in this town for testifying in this case?

A. Not as I know of.

Q. Was anybody ever harmed in any way for testifying in this case?

A. I don't know that——

Q. Was there ever any disturbance about anybody testifying in this case?

A. I don't know what it would have been.

Q. Now, you say you were afraid to testify, and didn't tell
16 this on that ground; and yet you voluntarily wrote to Mr. Sanford all that you know, and now testify about it, just to get hurt. Is that it?

A. I don't know what you are going to do.

Q. Well, you thought there was danger in it, and you didn't tell it before because you were afaid, yet you voluntarily wrote this story up there so you could be examined as a witness and tell it, didn't you?

A. I wanted to tell it.

Q. And volunteered this statement in order to get hurt? Is that it?

A. Oh, well, I don't know anything about the hurting part of it.

Q. Don't you know you are not going to get hurt and never thought about that? You are afraid now, are you?

A. Well, I don't feel perfectly satisfied.

Q. You don't feel perfectly satisfied?

A. No, sir; I don't.

Q. Why are you not feeling satisfied; because you are not satisfied with this story you have told?

A. Oh, I am satisfied with the truth I have told. I am not talking about the story part.

Q. You told him it was Mr. Tom Taylor, didn't you?

A. If I told him it was Mr. Tom Taylor I meant the Taylor I am talking about now.

Q. You told him it was Mr. Tom Taylor, didn't you, a deputy sheriff?

A. I don't remember about the Mr. Tom part.

Q. Don't you know that you told him—that you wrote Mr. Sanford that it was Mr. Tom Taylor?

17 A. I know not; no, sir.

Q. Now you say you didn't write him that?

A. I wouldn't say so. I wouldn't say I did or didn't.

Q. You don't remember what Taylor you did write him it was, do you?

A. I told him it was Mr. Taylor.

Q. Mr. Taylor?

A. Yes, sir.

Q. And you don't remember which Taylor you told him it was?

A. I don't remember whether it was Mr. Tom or Mr. J. E. Taylor. I know which one I was talking about. I wasn't talking about this one over here [indicating].

Q. You say you went to church that night?

A. Yes, sir.

Q. You had been there with your wife?
A. Yes, sir.
Q. What time did church turn out?
A. It turned out—I don't know what time it turned out.
Q. What time of the night was it you saw these men?
A. Well, I came out of church before the jurisdiction.
Q. Before what?
A. Before the jurisdiction, you know.
Q. You came out of church before the jurisdiction?
A. Well, before, you know, they dismissed it I was out.
Q. You came out before they dismissed the church?
A. Yes, sir.
Q. You left the church ahead of time?
A. Yes, sir.
Q. Why did you do that?
A. Well, I had a right to leave.
18 Q. I know you had a right, all right; but why did you leave?
A. I left there on account of my daughter. I had two grown daughters, and they were by themselves, and I didn't feel it was safe to leave them so long, and after we got through transferring our business we left.
Q. Because you got uneasy about your daughters?
A. Yes, sir.
Q. What was your business that you went there and 'tended to?
A. 'Tended to?
Q. Yes.
A. A members' meeting.
Q. It was a regular sermon?
A. No, sir; it was Monday night.
Q. And when you got through with your members' meeting, how long were you there?
A. As soon as we got through voting on what we were voting on, me and my wife come on away. We were not thinking about this question.
Q. How long did you stay there that night?
A. I don't remember exactly how long.
Q. What time did you go there?
A. About half past 7 or 8, I suppose.
Q. Between 7.30 and 8?
A. Yes, sir.
Q. And you had a members' meeting?
A. Yes, sir.
Q. What was the members' meeting about?
A. Electing officers, and so on.
Q. Did you elect officers that night?
A. Yes, sir.
19 Q. Who did you elect as officers?
A. I don't remember now.

Q. You don't remember?
A. No, sir.
Q. Don't you remember any of the officers you elected that night?
A. No, sir; I do not.
Q. What church is that?
A. The African Methodist.
Q. African Methodist Church?
A. On the corner of 6th and Chestnut.
Q. You elected officers that night?
A. Yes, sir.
Q. And you don't remember any of them?
A. Not now.
Q. Although you went there especially to elect officers?
A. A called members' meeting; yes, sir.
Q. And you were so interested that you left your daughters at home, unprotected; and you left as soon as the election was over?
A. Yes, sir.
Q. And yet you can not remember the officers you elected?
A. Not at present; no, sir.
Q. But you can remember you saw Mr. Galloway?
A. Yes, sir.
Q. How long were you in that meeting?
A. Well, I don't remember exactly the time we went out of there. I know it was a few minutes before ten, because the clock struck ten while we were on Market street, waiting for the car.
20 Q. And while you were waiting for the car the clock struck ten?
A. Yes, sir.
Q. Was that after you saw the crowd or before?
A. It was before we seen this excitement.
Q. You got the car on Market street, did you?
A. No, sir; after we saw the excitement we took a notion to walk on up there and see what was going on.
Q. You were waiting for the car when you first saw the excitement?
A. Yes, sir.
Q. Then you left the car and walked up there?
A. Yes, sir.
Q. And the clock struck ten just before you started?
A. Yes, sir.
Q. What car were you waiting for?
A. East 9th street car.
Q. And it was probably, then, 5 or 10 minutes after ten when you got up there?
A. Well, probably it was; yes, sir.
Q. It didn't take over 5 minutes to walk up there?
A. We didn't rush.
Q. You didn't rush?
A. No, sir.

Q. It was something in the neighborhood of ten after you got up there?

A. Yes, sir.

Q. Was there a crowd on 6th street?

A. 6th?

Q. Did you see any other crowd except the crowd that passed
21 you?

A. Just the two men that the crowd attracted.

Q. You saw nobody else?

A. No, sir.

Q. How many were in that crowd?

A. Do you mean in the lynching crowd?

Q. Yes.

A. It just seemed to be about 75, or probably more.

Q. Seventy-five or more?

A. Yes, sir.

Q. How close did you say they got to you?

A. I was right there in the corner. The bridge was sitting over there, and they were right at me, about 45 feet, I guess.

Q. And you crouched down under some shade trees?

A. No, sir; I got down under the magnolia tree.

Q. Did the branches from the trees cut off your view?

A. It hid us, because we were in the shadow, and could see them plainly.

Q. Did it cut off your view any?

A. Not a bit.

Q. Where did they have the colored man?

A. They had him in front.

Q. In front?

A. Yes, sir.

Q. And you could tell he was a colored man?

A. Yes, sir.

Q. Who had that man?

A. I haven't seen that man since, but I could pick him out
22 if I could see him. He was a big, heavy-set, grossly set, comical looking. He looked like a hard laboring man, something like that [indicating]; and I haven't seen him no more. He was smooth faced, and had on a derby.

Q. All laboring men are comical looking to you?

A. He wasn't a business man.

Q. He was a comical-looking man? Who else had him; just the one man?

A. No; one more man on the far side.

Q. Who was he?

A. I couldn't get him.

Q. Was he a comical-looking man, too?

A. No, sir; he was tall, slim, and a spare-made fellow.

Q. Who else was with him?

A. All the rest of the crowd was behind.
Q. Who were they?
A. I don't know.
Q. Didn't you see the men up next to the prisoner?
A. I couldn't tell who they were.
Q. Didn't you know any of them?
A. Not particularly.
Q. Did you know them in general?
A. Well, I seen their faces; but I was kinder under excitement—scared, kinder.
Q. What did they have on that colored man?
A. They didn't have nothing, only this big man had him fastened up here [indicating] on his coat, back behind.
Q. Did you know the colored man?
A. I never seen him to know him at all. I wouldn't swear
23 it was Ed. Johnson; but I know he was a colored man.
Q. And you were excited?
A. A little bit; yes, sir.
Q. And you kept watching the colored man?
A. I kept watching him till he passed by; and then I heard the grossly talking along in the rear, and some man was called back in there.
Q. What did he say?
A. He said, "Don't you all holler so loud; you'll wake up everybody around here," or something that way.
Q. Now, this man was gross?
A. Grossly talking.
Q. And because he said to keep quiet that attracted your attention more than the fact that they had the darkey up in the front, and you quit noticing the darkey they were going to kill, and turned your eyes back to the man that said "keep quiet?"
A. After he passed me, and I could see him in plain view of the corner of 6th and Walnut—after they passed so far up there I couldn't see them any further from the shade trees, and these men were coming on.
Q. They were behind?
A. In the rear; yes, sir.
Q. And this man that had the gross voice, all he said was to keep quiet, "you might wake the people up?"
A. I wouldn't say what man that was; I heard the voice.
Q. What else did the man in front say?
A. The man in front?
Q. What did the man in front say?
A. The men that had Ed. Johnson?
24 Q. Yes.
A. I don't remember hearing them say anything in particular.
Q. Did anybody say anything at all?
A. I heard the voice down in the rear; yes, sir.

Q. Was that the only man that opened his mouth along there?

A. They were all mumbling something. I couldn't understand them.

Q. Were they saying anything?

A. This Johnson was saying more than any of them—making more noise.

Q. Were the men saying anything?

A. You could hear them talking; but you could not understand what they were saying.

Q. Were they talking loud or low?

A. They were sorter mumbling, and Johnson was saying, "I didn't do it! I didn't do it!" and about that time this voice said, "Don't talk so loud; you'll wake up the people along here."

Q. They were cautioning Johnson?

A. I don't know who he was talking about.

Q. Ed. Johnson was the only man that was hollering, wasn't he?

A. He was the loudest one.

Q. And this man was cautioning Johnson not to wake up the people, wasn't he; is that it?

A. He was away in the rear; back in there somewhere.

Q. Johnson was the only man making a loud noise, wasn't he?

A. I heard them mumbling and talking; but this man was the one that was hollering the most.

Q. And the others were talking in a low mumble, and you could not distinguish what they were saying, and Johnson was the one that hollered out that he didn't do it?

A. And this man back here; this man with the gross voice——

Q. Hollered out to Johnson, and told him not to make so much noise; that he was afraid he would wake the people up?

A. That's right.

Q. Did Johnson quiet down when he cautioned him not to wake up the people?

A. I didn't hear him quiet down. He kept on.

Q. You didn't hear him quiet any?

A. This man was away back in the rear of the crowd that I heard the voice. My attention was called back there. It seemed he was talking to all them.

Q. Talking to Ed. and the rest of them?

A. Yes, sir.

Q. Nobody was talking aloud but Ed., was there?

A. They were talking.

Q. You were right at them, and you could not hear them?

A. They were not whispering.

Q. You could not hear a word they were saying, and you were right at them?

A. I wasn't listening particularly.

Q. You were not listening?

A. Not particularly to what they were saying.

Q. They had a man taking him off to kill, and you were not listening?

A. You couldn't have heard it if you had been where I was. I didn't know what they were talking about.

Q. You say you were not listening to what these men were
26 saying?

A. Not particularly; no, sir.

Q. It didn't attract your attention? There was nothing there to attract your particular attention, was there?

A. It attracted my attention to see them; got me kinder frightened to see the crowd up there.

Q. You were not frightened or excited, were you?

A. Well, I was kinder, a little excited at first.

Q. Don't you know you were scared and excited?

A. It happened so quick on me, that way; I guess anybody would get excited a little.

Q. You were scared, frightened, and excited?

A. It kinder growed over me when this man spoke.

Q. You got excited until you saw this man, and he quieted all your fears and made everything clear to you? You could recognize him, and hear what he said?

A. I didn't say it was him said it at all.

Q. Oh, he wasn't the one that said it?

A. I heard a voice in the rear. I didn't know who spoke, the gross voice.

Q. You don't contend that Mr. Galloway spoke the gross voice?

A. I don't say it was him.

Q. You don't say it was he who had the gross voice, or advised them to be quiet?

A. I won't say so.

Q. Who was it?

A. I don't know who it was.

Q. You don't pretend, really, that you saw Mr. Galloway at all, do you?

A. I say so; yes, sir.

27 Q. Do you say so? You said just now you would not pretend to say it was him.

A. I don't pretend to say it was him spoke the grossly voice. I say I wouldn't say it was him.

Q. What was the man doing that had the grossly voice?

A. I couldn't tell who spoke the voice, more than I heard it, and my attention was called to it. I didn't look that way at the present.

Q. Who called your attention to it?

A. That gross voice I heard called my attention to it.

Q. That is the only thing that did call your attention?

A. By that time I heard it, I looked down, and called my wife's attention to the two men.

Q. What time did you first hear the noise up there and excitement on the street?

A. Well, I couldn't exactly tell you the time; it was something after ten.

Q. How long after the clock struck ten?

A. I couldn't say that.

Q. How far were you from the place under the magnolia where you hid when you first heard it?

A. First heard it?

Q. The noise and excitement up there?

A. I never made no break to run till I saw them up on me nearly.

Q. I mean when you were standing down there waiting for the car. How far was that from the magnolia trees?

A. Two squares and a half away, you might say.

Q. Nearly three squares, isn't it?

28 A. Well, let's see, we were on the far side of Market and 6th streets, waiting for the car; then across the Market street; and then come to the opera house; and it is just 2 squares after you get to the opera house.

Q. Two squares and 2 streets?

A. One street.

Q. Well, you crossed Market and the other street?

A. Two squares, isn't it?

Q. Yes, 2 squares and 2 streets that you crossed after you heard the noise?

A. I crossed Market and another street; it was Cherry street; and the next is Walnut.

Q. Well, then, where was that noise when you first heard it?

A. It was in the rear of the crowd that was coming along.

Q. I mean when your attention was attracted up there and you heard the noise?

A. When I heard the footsteps we were right at it, nearly, and we ran up the steps there.

Q. I mean when you were down on Market street and first heard the noise that kept you from getting on the car.

A. I didn't hear any noise at all. I saw the excitement, people passing and repassing. At that time of the night it seemed some excitement, that they were traveling very swiftly.

Q. In what direction?

A. Going back and forward. You could see them under the electric light.

Q. Where was that?

A. On the corner of 6th and Walnut. The electric light shone under it.

29 Q. How far was that from the bridge?

A. It's about three or four squares. It's about—well, the jail sits in the middle of a square there, on Walnut street, between 7th and 6th.

Q. They were hurrying towards the bridge from there, weren't they?

A. No, sir; they seemed to be going and coming from somewhere. I could see them pass and repass; but the crowd wasn't going on till I got there.

Q. Why did you go to the particular point where you did go?

A. We saw the excitement.

Q. You didn't go to the place where you saw the excitement, did you?

A. Went right to it. We went where we saw the parties passing and repassing. It was something unusual.

Q. You saw that up on 6th street, and immediately went to 6th street?

A. I was standing on the corner of 6th and Market; and, you see, you could see it up the street.

Q. And you saw the people on 6th and Walnut, didn't you?

A. It seemed to be a crossing there. You could see them crossing. I didn't know which way they were going.

Q. You saw that at 6th and Walnut street?

A. Yes, sir; seemed to be excitement.

Q. At 6th and Walnut?

A. It seemed to be excitement.

Q. And you left where you were, and walked to the corner of 6th and Walnut street?

A. Yes, sir.

Q. You walked leisurely, didn't you?

30 A. I took my time.

Q. And walked up there?

A. Yes, sir.

Q. And when you got up there—walking leisurely across the two streets and two squares, until you got to the corner of 6th and Walnut—the crowd hadn't passed, had it? It hadn't gone on then, had it?

A. Yes, sir; just as soon as we got on the corner of 6th and Walnut, why, they come—just come on down the street, you know.

Q. Where were they?

A. Right up there between the jail and 6th streets; somewheres in there.

Q. And you were on that corner?

A. On this corner where this gentleman lived where I ran up, Mr. Kain's house.

Q. And that occurred after you saw the excitement at the corner of 6th and Walnut streets?

A. Yes, sir.

Q. Which is more than half way between the jail and the bridge, isn't it?

A. Well, I wouldn't say so.

Q. About half way, anyway?

A. Well, you can guess at it.

Q. You are the witness, now. Give us your opinion.

A. I wouldn't say it was half, or wasn't half. I don't know; I wouldn't say; I haven't measured the distance.

Q. Did you wait until after they had got on the bridge?

A. Oh, I waited there in that place until after they got on the bridge.

31 Q. Yes.

A. No, sir; I didn't. I don't think I did.

Q. How far did they get past you before you got out from there?

A. About to the rise of the hill up there. I couldn't hear them any more; so I skipped out.

Q. Who went with you?

A. Me and my wife.

Q. Where did you go?

A. Went up to Georgia avenue and down to McCallie avenue and out to Park avenue and out home.

Q. You went down 6th street?

A. Went up 6th street to 6th and Lookout street and Georgia avenue, down there, and went down around the court-house to McCallie avenue and out McCallie out home.

Q. About 2 miles and a half?

A. No, sir; it isn't more'n a mile.

Q. Was your wife with you all the time?

A. Yes, sir.

Q. Did you see anybody during that trip?

A. Not a soul.

Q. Not a soul?

A. Didn't meet anybody.

Q. There wasn't anybody on the street?

A. No one on McCallie. We didn't meet anyone; didn't see anyone.

Q. Did you go back by the Times building?

A. No, sir. we didn't; we kept straight on.

Q. Down Georgia avenue?

32 A. No; we went out McCallie avenue, you see.

Q. To what street?

A. Till we come to Park avenue, and turned in.

Q. Do you live on Park avenue?

A. No; I lived at 1017½, in the rear, on 10th street, back behind Mr. Huffaker and Mr. Early here [indicating].

Q. What time did you get home that night?

A. I couldn't tell you exactly; I suppose it was eleven; probably it was after eleven.

Q. Where were you when the clock struck eleven?

A. I couldn't tell you.

Q. You can tell where you were when the clock struck 10.

A. I was too far away to hear it.

Q. You don't hear the clock out there?

A. When the wind is that way we can. Probably the wind was against us.

Q. You say you saw the excited crowd up there on 6th and Walnut streets.

A. Yes, sir.

Q. You didn't know which way they were going?

A. They seemed to be mixing, you see; darting through the electric light.

Q. And all that excitement up there made you suspicion something, then, about the mob, and you got excited?

A. No, sir; I was as cool as a cucumber.

Q. Don't you know you were afraid, and that you thought there was going to be a mob for several days?

A. Not then; everything was cool.

Q. Everything was cool that night?

A. No talk of a mob; just as quiet.

33 Q. No talk of a mob at all that night?

A. No, sir.

Q. Nobody expected a mob that night?

A. No, sir; we didn't.

Q. There was no excitement in town that night?

A. Not a bit.

Q. Everybody was quiet and in good humor?

A. Everybody was as peaceable as could be.

Q. Nobody in this town expected any mob?

A. Nobody until this happened.

Q. Nobody, until this happened, expected it?

A. I didn't know anything about it.

Q. You hadn't heard it hinted that night?

A. No, sir.

Q. Well, now, when you wrote this letter—I want to get back to that—do you remember the date you wrote that letter?

A. I do not.

Q. Can you remember about when you wrote that letter?

A. Sometime along in the winter; I don't remember the date.

Q. Now, have you a copy of the letter that you wrote?

A. Did I recopy it?

Q. Have you a copy of it?

A. No, sir; I have not.

Q. You have not?

A. No, sir.

Mr. LYNCH. Mr. Penland, you haven't that letter, have you?

Mr. PENLAND. No, sir; I haven't any correspondence at all.

34 Q. Did you tell Mr. Sanford you wanted to be a witness?

A. I did not.

Q. What did you tell him in that letter.

A. I wrote him—I don't remember now when I wrote him; but I told him I knew something about it; that I had seen 2 men and I could identify 2 men in that mob that lynched Ed. Johnson on that night.

Q. Did you tell him who they were?
A. I told him distinctly Mr. Taylor and Mr. Galloway. I don't remember about the initials of the men.
Q. Did you tell him in that letter that you didn't know their initials?
A. I did not.
Q. Who told you to write that letter?
A. I told myself.
Q. Who advised you to write that letter?
A. I advised myself.
Q. Who did you talk with about that letter?
A. I didn't talk to a living soul.
Q. You didn't even let your wife know about it?
A. She didn't know a thing about it until I had done sent it.
Q. She never saw the letter?
A. Never read it, and never seen it.
Q. She didn't read it, and has never seen it?
A. No, sir.
Q. You told him there were two men you could identify?
A. Yes, sir.
Q. You didn't tell him you could identify the man in front, with his hand on Johnson?
A. I couldn't identify him, because I wasn't acquainted with
35 the man. I seen his face, but I haven't seen him no more afterwards.
Q. Didn't you say, a while ago, that if you could see him again you would know him?
A. I think I would.
Q. And that you could describe him?
A. I don't know that I could positively, but I could try.
Q. Didn't you tell Mr. Sanford about that?
A. No, sir; I am only telling what is facts. I didn't want to tell him I could identify something I couldn't. That's the truth.
Q. Who, then, came to see you about it?
A. Come to see me?
Q. Yes. After you wrote that letter, who came to see you about it?
A. Oh, I don't know who he was—a lawyer.
Q. You gave him a statement about it?
A. Yes.
Q. Did you tell him who that Mr. Taylor was?
A. Sir?
Q. I said, did you tell who the Mr. Taylor was that you saw?
A. I told him it was Mr. Taylor. I don't know whether I got his initials right or not.
Q. Do you remember what you told him?
A. I don't know the initials. I may have made it J. E. and I may have got it T. B. I don't remember.
Q. You are careless about that?

A. Well, with the initials I was; but I wasn't careless about the man.

36 Q. You have known them both for quite a while?

A. I've known them both for quite a while; yes, sir.

Q. You know their initials, and their names?

A. Not their initials; no, sir.

Q. Don't you know Mr. J. E. Taylor?

A. Yes, sir.

Q. You know he is never called Tom Taylor?

A. I know his face.

Q. He is never called Tom Taylor—you know that, don't you?

A. He was always called Mr. Taylor.

Q. You never knew him as Tom Taylor?

A. No, sir; not as I know of.

Q. You never called him Tom Taylor?

A. I know it was a Mr. Taylor. I may have wrote it Mr. Tom Taylor; but the man I know, that is a black-mustache man.

Q. And you may have told him it was Mr. Tom Taylor?

A. What were his initials, I might. I wouldn't say I did or didn't.

Q. Did you ever work for Sprague & Company, down here?

A. No, sir.

Q. Did you ever have any trouble with them?

A. No, sir.

Q. They never had you arrested?

A. No, sir.

Q. What officer arrested you the various times you have been arrested?

A. Various times?

Q. Yes.

A. I haven't been arrested "various times." I have been

37 arrested twice.

Q. Who arrested you?

A. Mr. Tom Taylor, the red-mustache man, I think, arrested me about the sewing-machine cabinet.

Q. Who arrested you the other time?

A. The other Mr. Taylor.

Q. J. E. Taylor?

A. Yes, sir.

Q. He arrested you the other time?

A. Yes, sir.

Q. So these two Mr. Taylors are the two Taylors that arrested you the 2 times you have been arrested?

A. Yes, sir.

Q. Did you see Joe Franklin there that night?

A. No, sir; I haven't seen him since he come and went away.

Q. Did you see him the night of the lynching?

A. I didn't see a living man around there except those in the crowd.

Q. Did you see a man by the name of Stokes standing on the corner of 6th and Walnut?

A. I did not; I was on the corner myself.

Q. If he had been there you would have seen him?

A. I would if he hadn't been hid somewhere.

Q. You know if he had been over there you would have seen him?

A. I don't know; I wouldn't say so.

Q. If he walked along behind that mob, and followed the mob, you would have seen him?

A. If I could have seen him I would. I didn't see a black man in it, except the one they had.

38 Q. Did anybody follow along behind that mob?

A. Not as I seen, and I staid there until they got to the top of the hill.

Q. You staid there until the whole crowd passed over the top of the hill?

A. Yes, sir.

Q. Out of sight?

A. No, sir; out of hearing.

Q. And most of them out of sight?

A. By the time I got out I looked and didn't see any of them.

Q. And yet nobody was following the crowd out there?

A. No, sir; not as I seen. If they did, they come later on. I was in a hurry myself.

Q. Up to the time the mob passed out of sight nobody came along following?

A. Not as I seen.

Q. And you were right along there on Walnut street, on the corner of Walnut and 6th streets?

A. What time I staid there; yes, sir.

Q. Until the crowd passed out of sight?

A. Yes, sir.

Q. And then you came out and passed on up the street to Georgia avenue?

A. Up 6th street—on the far side of 6th from here.

Q. To Georgia avenue?

A. Yes, sir.

Q. You say you know Mr. Galloway?

A. I know him when I see him.

Q. He never arrested you, did he?

39 A. No, sir.

Q. Did he ever arrest any of your friends?

A. Not as I remember. I haven't any particular friends that I know of, that way.

Q. I want to get back to that change of heart business, when you concluded that you wanted to tell this. You say nobody talked to you to get you to do that?

A. No, sir; not a living soul.

Q. You thought it was your duty?
A. I felt like it.
Q. Why?
A. It looked like principle.
Q. What principle?
A. Well, it didn't look like principle if you know anything and don't tell it.
Q. Do you tell everything you know?
A. Well, principally I do; in a case like that I would.
Q. A case like what?
A. A case like this last occurrence we are just talking about.
Q. You thought somebody ought to be punished, didn't you?
A. (Witness hesitates.)
Q. And it was that principle, that somebody ought to be punished, that you concluded you ought to tell that?
A. I didn't say so, sir. I tell it on my own merits, and had nobody to advise me.
Q. You are mad at Captain Shipp and his deputies about this matter, and as a matter of principle you wrote this story up there to Mr. Sanford?
A. You may think that; I don't.
Q. They began to talk around town here that there wasn't going to be anything done to Captain Shipp and his deputies——?
A. I didn't hear that.
Q. ——and that the case would be disposed of; and the case had gone along here for nearly a year after the witnesses were examined, and the court hadn't done anything to them; and then you sat down and wrote this story to Mr. Sanford, as a matter of principle? That is it, isn't it?
A. Yes, sir. Well, sir, I think it is a matter of principle to tell the truth.
Q. But you didn't think it was a matter of principle when they were first hearing this case, did you?
A. Well, not at that time; I was scared.
Q. When did you get over being scared?
A. Well, as the case kinder cooled down and worked down.
Q. Why, the case had already cooled down when these witnesses were examined, hadn't it?
A. Not so much.
Q. Was there any excitement here in this court-house at all when these witnesses were examined?
A. Not as I know of.
Q. I will ask you to state whether or not there are more people here now than when the witnesses were examined before?
A. I never took particular notice to see how many were in here.
Q. Turn round and look, and see if the court-house isn't full now.
A. (Witness turns and looks.) It was full then, wasn't it?

41 Q. I will ask you whether or not it was the same bunch of colored men here then as are here now?

A. I couldn't give you a definite answer on that at all.

Q. And I will ask you whether or not at that time there were more colored men here than white men?

A. I was up here only once.

Q. And you were the only colored man up here at that time?

A. No, sir; there were a lot of colored men up here.

Q. Weren't you afraid to come up here at that time?

A. Not particularly.

Q. Did anybody do anything to you?

A. No, sir.

Q. Did anybody do anything to the rest of the colored men up here?

A. Not as I know of.

Q. Don't you know that this talk about being afraid isn't so?

A. Well, if you put yourself in my——

Q. Answer the question. Don't you know that is not so, and you were never afraid at all? Isn't that so—that you were never afraid?

A. I'm not going to answer it.

Q. You won't answer that?

A. No, sir.

Q. Don't you know that there never was the slightest danger to anybody that testified in this case?

A. (Witness hesitates.)

Q. Did you go to Mr. Penland there, and ask him if the United States Government would protect you if you testified?

A. I told him I wouldn't feel safe.

42 Q. At the time they were examining witnesses in this case before there were United States marshals here, weren't there?

A. I don't know.

Q. And the United States commissioner from Washington was here, and the United States district attorney was here?

A. Yes, sir.

Q. And the Assistant Attorney-General for the whole United States was here?

A. (Witness hesitates.)

Q. And the whole army of the United States was out here at Chickamauga Park, and all the policemen in Chattanooga were here, and you were afraid to tell the truth?

A. (Witness hesitates.)

Q. Is that so?

A. I am under that impression, that I was afraid at that time to say anything.

Q. Oh, answer the question. You were afraid, and yet you were up here and saw witness after witness go on the stand and testify against Captain Shipp and his deputies, and then go off in peace, didn't you?

A. I wasn't here during all the time. I was only here once, in the evening.

Q. And at the time you were up here you didn't see anybody harmed at all, did you?

A. How many was here as witnesses to testify?

Q. Answer the question, now. We don't want any of your impudence about it. You didn't see a single human being harmed, did you?

A. Not the evening I was here; no, sir.

43 Q. And you didn't hear of anybody being harmed during the whole time they were examining witnesses, and you knew that witness after witness was being examined up here, and left in peace, and yet you didn't come up here and tell the gentlemen what you knew?

A. I had a reason for it; I was afraid.

Q. You were afraid?

A. I was afraid; yes, sir. With all the police and armies and all, you know, I was afraid, under the circumstances.

Q. You were afraid to tell the truth, and ask them to protect you, were you? And after the whole thing was over, and you became afraid they were going to turn them loose, you concluded, as a matter of principle, that you wanted to tell all about it, and volunteered out of principle?

A. I didn't say that, sir.

Q. Didn't you say that a while ago?

A. You are the one that's making that up.

Q. Didn't you say, as a matter of principle, you thought you ought to tell it?

A. Yes, sir; I thought I ought to tell it.

Q. I will ask you if you were ever arrested on East 9th street?

A. No, sir.

Q. Were you ever arrested charged with stealing brass?

A. No, sir; you haven't got any brass against me.

Q. Just a sewing machine, and things like that?

A. You just want to rake up something.

Q. Were you ever in the workhouse?

44 A. No, sir.

Q. Were you ever in the penitentiary?

A. No, sir.

Q. Who else did you ever tell this story to except Mr. Sanford and the officer?

A. That's all.

Q. Did you ever tell it to your minister?

A. No, sir; I did not.

Q. And you can't remember a single officer you elected down there at the church?

A. That night?

Q. Yes.

A. No, sir.

Q. Not a one?

A. We change every month there, you see. I don't remember what officers or work we did do.

Q. Does that church keep a record of its meetings?

A. Yes, sir; you can find a record of it in reference—I don't know whether you can or not—if we change pastors you can. But if you want any proof to it, I can get it for you. If you want any proof I wasn't there, I can give it to you.

Q. Who do you rent from?

A. Who?

Q. You.

A. I don't rent at all.

Q. Do you own your own house?

A. No, sir.

Q. How do you live?

A. We room; we are not keeping house.

45 Q. Who do you rent your rooms from?

A. We are renting now from a man out in Ross Town.

Q. Who is he?

A. Williams.

Q. What Williams?

A. Charlie Williams.

Q. Then you do rent, don't you?

A. Well, that's the rooms, you know. We don't keep house, I mean.

Q. Who have you been renting from ever since this trouble occurred?

A. Well, different people.

Q. Did you ever rent from Goldstone?

A. Never did.

Q. And you don't want to tell the others you have been renting from?

A. Well, yes, sir.

Q. Haven't you a lot of friends that rent from Goldstone?

A. Narry one that I know of.

Q. He's got it in for Galloway and the rest of them?

A. I don't know whether Galloway knows Goldstone or not, or anything about it.

Q. I want you to describe this man Taylor; tell all about him.

Mr. PENLAND. He insists that this is not the man. I don't see how that is competent.

Mr. LYNCH. I mean the other man that he saw there.

Mr. PENLAND. It's taking up unnecessary time, it seems to

46 me. He is not a defendant.

Mr. LYNCH. Well, if he'll tell the truth about it——

Mr. PENLAND. We want to accept to that, because the other Taylor referred to by the witness is not a defendant in the case; and all this is, therefore, wholly irrelevant and immaterial. We simply want to insist on it because of the fact that it is taking up time.

The COMMISSIONER. The stenographer will note the objection.

Mr. LYNCH. But if his statement is false in reference to the man Taylor, it would naturally be false in reference to Mr. Galloway; and we want him to tell it for that reason.

Q. Now, about this man Taylor; I want you to describe him.

A. Why, I don't see anybody in here to compare him with, unless he was here himself.

Q. You know him well?

A. Yes, sir; I know him when I see him.

Q. Tell what kind of a looking man he is.

A. Kinder about that gentleman's build, there [indicating]; black mustache——

Q. Black mustache?

A. Yes, sir.

Q. How tall is he?

A. He wears a slouch hat; his face isn't as red as that gen-
47 tleman's there [indicating]; and it's more paler looking.

Q. He isn't as handsome a man?

A. I don't know bout the handsome part.

Q. He is paler, and has a black mustache?

A. Yes, sir.

Q. He is a pale sort of a man?

A. Pale faced.

Q. And wears a slouch hat?

A. Well, his face isn't as round as yours. It looks more like yours in color.

Q. Now, is he the constable?

A. He's something, you know; he's an officer.

Q. Ise he a tall man or a short man?

A. Why, he's medium; just about that gentleman's size, there [indicating]. I know him—been knowing him for years—it isn't so many years, 4 or 5; probably longer than that.

Q. You have known him ever since he arrested you?

A. I have known him way before he ever arrested me.

Mr. PENLAND. Judge Lynch, there was one question I omitted in the examination-in-chief, and you may cross-examine him on it.

Redirect examination, questions by J. R. PENLAND:

Q. I omitted to ask you, in the examination-in-chief, Henry, whether or not the man that you identify as Mat Galloway was carrying anything that night? If so, describe what he had.
48 A. It seemed to be something—he was on the far side from me; but it seemed he had something down [indicating]—it seemed like something of a gun, or a heavy stick. I wouldn't say whether it was a gun or a stick or not.

Q. He had something in his hand?

A. Yes, sir.

Q. I believe you stated that you hadn't heard anything about the lynching that night, or anything of excitement in town, when you went to church?

A. No, sir; not a breath of it.

Q. Was the first excitement that you observed or heard anything about what you saw up on the hill from where you were standing on the corner, waiting for the car?

A. That was the first I knew about it; yes, sir.

Q. That was the first thing to attract your attention?

A. Yes, sir; it was.

Q. When you observed that you started off in that direction, you and your wife?

A. Yes, sir; after these two men attracted my attention. I was intending to catch the car, and——

Q. Just answer the questions. Pay attention to what I ask, and answer briefly and fully. What were you going up there for; to ascertain the attraction, or what?

A. We saw them mixing up there, and I said to my wife, "Let's go up there"——

Q. And you went for that purpose?

A. Yes, sir.

Q. Was it on your way, now, that you saw the people come down the street?

49 A. Coming back down the street?

Q. Yes; or up. Which way were you going?

A. We were going in that direction [indicating]. What people are you referring to?

Q. Those people in the street.

A. Those 2 gentlemen?

Q. No; the crowd.

A. Oh, we were going up 6th street, and right on the corner of 6th and Walnut we saw the crowd coming, bulging this way; and we took reference up that way [indicating], dodging them.

Q. Then it was you went into the yard?

A. Yes, sir.

Q. You say you didn't see anybody else about the yard there?

A. Not a soul; no, sir.

Q. State whether or not your attention was attracted to the crowd in the street especially. Was that what you were looking at, the crowd in the street?

A. Yes, sir; they were coming down the middle of the street, on the car line, when we seen them.

Q. And so, whatever Taylor you might have written about, the Taylor that has the black hair and black mustache is the one you referred to, and the one that you insist was along with the crowd that night?

A. That's the man I seen; yes, sir; I never seen this man [indicating defendant Taylor] at all.

Q. Had you worked near this man Tom Taylor, and did you know him well?

A. Yes, sir; I worked near him about 2 years, I think, probably more than that. I think I would have known him.

50 Q. Now, you stated there was some kind of a members' meeting at the church that night?

A. Yes, sir; electing officers, and so on.

Q. No sermon or preaching?

A. No, sir; it was a members' meeting.

Q. Did you mention anybody except these two men, Taylor and Galloway, in the statement you sent to Mr. Sanford?

A. Not a one, except those I could identify.

Q. And did you really know the initials of these two Taylors?

A. No, sir; I did not. I knew there were two Mr. Taylors, and I didn't know their initials. I got them mixed some way or other. But I know the other Taylor was the man I seen. I've been knowing the other one longer than I have this one.

Q. Now, I understood you to tell Mr. Lynch that you had never been in the penitentiary?

A. No, sir.

Q. Nor workhouse?

A. No, sir.

Q. About how long were you in jail there?

A. Oh, a couple of hours. You know they snatch you up and won't give you a chance to make bond.

Q. Did you give bond?

A. Yes, sir; as soon as I could get word to somebody.

Q. And you only stayed in a few hours?

A. Yes, sir.

Q. State whether or not these matters were all dismissed, or went to naught in the courts?

A. Everything was knocked out—no true bills nor nothing.

Q. That was the first one?

51 A. It was stopped before it went to trial. Of course, they got a true bill, but I squashed it before it went to trial.

Q. And the other was over the sewing-machine matter, and that was settled?

A. Yes, sir; that's over with.

Recross-examination, questions by J. J. LYNCH:

Q. You stated Mr. Galloway was on the opposite side of the street from you?

A. Yes, sir.

Q. And there was a big crowd there, about 75?

A. It seemed to be about that.

Q. There were lots of them closer to you than Mr. Galloway?

A. Oh, I don't know. They all passed about the same distance.

Q. If he was on the opposite side of the street, there were lots of them between you and him, wasn't there?

A. He was the rear man.
Q. You were sitting there under the magnolia tree?
A. Yes, sir.
Q. Covered by it?
A. Yes, sir; under there.
Q. And your wife was under there, too?
A. Yes, sir.
Q. Was she sitting down, too?
A. Squatted down; yes, sir.
Q. And the crowd passed by you going towards the bridge?
52 A. Yes, sir.
Q. And Mat was on the other side of the street?
A. On the opposite side.
Q. On the opposite side of 6th street?
A. Walnut street; but he was in the crowd, the way the rest was going.
Q. They weren't all on the opposite side of the street?
A. Well, you see, he was on the opposite side of the man, Mr. Taylor.
Q. Didn't you say, in answer to Mr. Penland's question, that you couldn't see whether it was a gun he had or not, because he was on the opposite side of the street?
A. I couldn't see whether it was a gun or stick or not.
Q. Because he was on the opposite side of the street?
A. Because he was on the opposite side of the man. You see, he was with another man.
Q. There was a man between you and him, wasn't there?
A. Yes, sir; that's what I'm speaking about, and that was the man Taylor.
Q. And there were some people as close to you as Mr. Taylor?
A. Why, I suppose there was; yes, sir. I don't know whether there was any closer than Mr. Taylor. They was all in line, marching up the street.
Q. How far was Mr. Taylor from you?
A. Well, he was far from me to Mr. Early, I suppose—further. As far as from here to that far door, over yonder [indicating]. I can't tell the exact distance.
Q. About 30 yards?
A. No; I think it was about 45 feet, I suppose, from that place.
53 Redirect examination, questions by J. R. PENLAND:
Q. I will ask you to state whether or not there was a good deal of talk and excitement among the colored people here during that last investigation, Henry?
A. Yes, sir.
Q. I will ask you to state whether or not some of the colored people of the city who were connected with that Ed. Johnson matter really left the city, moved away?

A. Yes, sir; they're pretty well all gone, all of them.
Q. They have left the city?
A. Yes.

Recross-examination, questions by J. J. LYNCH:

Q. Who is it that's gone?
A. All of the witnesses.
Q. Name some of them.
A. Franklin is one, Bob Lyons is one, and this here fellow up here that said he cooked that man's vituals, Pres. Walker, he's gone, and all of them have gone.
Q. Name the ones that are gone.
A. I don't know any more. They're all gone. I haven't seen any of them.
Q. Name those that are gone.
A. There ain't none of them in Chattanooga that I know.
Q. Do you know all of the colored people that testified.
A. I think I do.
Q. Did you keep up with the colored people who testified?
54 A. Some, I did.
Q. Name the others besides these three?
A. Pres Walker, I said.
Q. That's one.
A. Franklin.
Q. That's two.
A. Bob Lyons.
Q. That's three.
A. (Witness hesitates.)
Q. Well, name some more.
A. Well, there's another one, I missed him.
Q. They were all gone before that came up? And don't you know a lot of the colored people who testified in this case are here yet?
A. I haven't seen any of them.
Q. Do you keep up with all of them? Don't you see Mose Stokes nearly every day?
A. No, sir; I don't. I don't know Mose; but I know his lawyers are gone, Hutchinson & Parden.
Q. Don't you know Mose Stokes is still here?
A. I don't know. I know Frank Stokes, a hackman. I didn't know he was in it.
Q. Don't you know he ran for constable out there in the 10th district?
A. I know his name is Stokes, but I didn't know it was Mose.
Q. He is still here, isn't he?
A. Yes, sir.
Q. Mr. Stonecipher is still here?
A. I don't know.
Q. All of them, except the ones you have mentioned, are here.
55 A. I'm talking about colored men.

Q. Stokes is a colored man, isn't he, very much?

A. I suppose he is.

Q. And the ones you have named are the only ones you can mention that did leave here, and the Government brought them back here to testify, after they had gone away, and they staid here in peace, didn't they? Who are you working for now?

A. I'm with the carpet-cleaning department. I'll show you.

Q. You needn't show anything; just tell it. You haven't quit your job, have you?

A. No, sir.

Q. You are going to stay here, aren't you?

A. Well, I don't know.

Q. Have you arranged to leave here?

A. Well, no, sir; I haven't exactly arranged.

Q. Now, every time you answer a question smart, that way, don't the colored people keep up laughing at your remarks? None of them are scared about this, are they?

A. I don't know anything about that.

Q. Don't you know they keep on laughing at your remarks? They don't look frightened, do they? There's nothing frightened about those people, is there? Don't you know that when Joe Franklin and the other colored witnesses were on the stand, the colored men in the audience back there enjoyed the performance very much, and nobody looked frightened, did they?

A. I don't know; I wasn't up here but once.

56 Q. There was nobody frightened when you were here?

A. I don't know.

Redirect examination, questions by J. R. PENLAND:

Q. Do you know whether or not Stokes really hid out to keep from testifying?

A. I don't know; no, sir; I wouldn't say.

Recross-examination, questions by T. W. STANFIELD:

Q. How long have you been acquainted with Mr. T. B. Taylor, one of the defendants in this case?

A. Mr. Tom Taylor, there [indicating]?

Q. Yes.

A. I think I've known him about 2 years, or something over that.

Q. Have you known him intimately?

A. I've worked next door to him over a year, I think, at Mr. C. E. Sprague's; I was at Mr. Balfour's.

Q. What was Mr. Taylor doing at that time?

A. He was running an engine there.

Q. Do you know whether or not he is an engineer?

A. Yes, sir; that's the truth.

Q. How long has he been an engineer, do you know?

A. No, sir; ever since I knew him.

Q. Do you know in what capacity he worked up there?

A. He was working as electrician up there.

57 Q. He has charge of the electric plant at the county jail?

A. Yes, sir; he told me so.

Q. The electric light plant is separated from the county jail, isn't it?

A. I don't know, sir.

Q. Isn't it in the rear of the county jail?

A. Yes, sir.

Q. And in a separate building?

A. I don't know about that.

Q. Well, now, the Tom Taylor that is a defendant in this case is not the man you saw there that night?

A. No, sir; I had reference to Mr. J. E. Taylor.

Q. And you didn't have reference to Mr. Tom Taylor, the defendant here [indicating]?

A. No, sir; if he was there I didn't see him.

Q. I will ask you if at that time there were two officers in the county by the name of Taylor?

A. At that time?

Q. Yes.

A. I wouldn't say whether he was an officer at that time; but this other Mr. Taylor was an officer then.

Q. Was this Mr. Taylor working there as electrician at that time?

A. Yes, sir; I've been seeing him around there——

Q. You know he did work at the jail?

A. Yes, sir; that's where he first went.

Q. And you know his business is that of electrician and engineer?

A. Yes, sir.

Q. He ran the electric light plant at Sprague's?

58 A. No, sir; he had a dynamo down there. He ran the lights, but he did most of the milk business there.

Q. He had charge of the machinery?

A. Yes, sir.

Q. It was the other Taylor you saw, and not this defendant?

A. That is it.

59 ADDIE LEE (colored), a witness for the plaintiff, was duly sworn, and testified as follows:

Direct examination, questions by J. R. PENLAND:

Q. Is your name Addie Lee?

A. Yes, sir.

Q. Where do you live, Addie?

A. Why, I'm out at Rosstown. I live at Rosstown.

Q. You live at Rosstown?

A. Yes, sir.

Q. Is that near Chattanooga?

A. Yes, sir; it is in Chattanooga; a suburb.

Q. Do you know Henry Lee that was examined as a witness here a while ago?

A. Yes, sir; it's my husband.

Q. He is your husband?

A. Yes, sir.

Q. How long have you lived in Chattanooga, Addie?

A. Well, I have lived here about 15 or 16 years, or longer might be.

Q. What do you do—what kind of work do you do?

A. Well, I have cooked. I'm mostly a cook; and I have been in business for myself since I have been married.

Q. What kind of business?

A. Why, the restaurant business.

Q. Running a restaurant?

A. Yes, sir.

60 Q. Did you know Ed. Johnson, the man said to have been lynched here some two years ago?

A. I don't know him personally; I know of him.

Q. You were not acquainted with him?

A. No, sir.

Q. But you knew of him?

A. Yes, sir.

Q. You didn't know the man by sight when you saw him?

A. No, sir.

Q. Do you remember the time he was said to have been taken out of the county jail and taken over about the bridge and lynched?

A. Yes, sir; I do.

Q. Where were you that night, Addie?

A. Where was I?

Q. Yes.

A. Why, I went to church that night.

Q. Who went with you?

A. My husband and I.

Q. Henry Lee?

A. Yes, sir.

Q. Where did you go to church at?

A. We went down on the corner of Chestnut and 6th street, the A. M. E. Church.

Q. The A. M. E. Church?

A. Yes, sir.

Q. Where did you go after church was over?

A. Why, we come home.

Q. Did you stop anywhere on the way from church home?

A. Yes, sir.

61 Q. Where did you first stop at?

A. On the corner of Market and 6th.

Q. What did you stop there for?

A. Why, we were waiting for a car.

Q. Was there a car line running from there to your home, or near there, at that time?

A. There was one running near there; yes, sir.

Q. How long did you stay there at that point where you stopped to wait for the car?

A. Why, we staid there, I guess, about 15 or 20 minutes, as nearly as I can remember. It might have been longer, I don't know.

Q. Did you see or learn of any excitement while you were standing there waiting for the car?

A. Yes, sir; I did.

Q. Where was that at?

A. Why, it was on the corner of Market and 6th that we waited.

Q. While you were there?

A. Yes, sir.

Q. Where was the excitement?

A. The excitement was up about the jail; but when we were standing there, we were standing there waiting for a car.

Q. Yes.

A. We stood there about 15 or 20 minutes—it might have been longer—I can't exactly state the time. But while we were standing there together 2 gentlemen come along; and they looked at us very hard and when they got even—and then they went on across the street, over on the right-hand side, going up towards the
62 jail, on 6th street hill. And they kept looking back at us, and kept looking back; and it attracted my attention—kept looking back; and so they looked back, and we looked up towards where they were; and we could see people repassing back and forward, up there in the electric light.

Q. Was that towards the jail?

A. Yes, sir; about 2 blocks from where we were at.

Q. State whether or not you went up in that direction, you or your husband, or both.

A. We both went up in that direction. We went up on the same side of the street. We were on the left-hand side and the 2 men were standing on the right-hand side.

Q. Yes?

A. That's where they went, across that way, and across the street, and went up. So we stood there and looked, and saw so many people passing my husband spoke to me and said, "Let's go up there and see what's the trouble up there." So we walked along, and we got about to the corner of Cherry and Walnut street and looked up the street and saw a number of people coming along; and we went right up—we were near the corner of the street, as from, well, I guess it is out there in the hall—near the corner of Walnut there is a house stands there on the left-hand side. There's a gate there, and a magnolia tree there in the yard; and they were so close on us we could hear the noise of the crowd coming, so we didn't want to come
63 in contact with them; and we went up in the gate and squatted down in the shade of the magnolia tree*d*, and sat there till the crowd passed us, going on up the hill.

Q. How many people do you suppose were in the crowd, Addie, that passed along the street there at that time?

A. Well, there might have been 50, or there might have been more; but there was a good many. I couldn't count them there. But there was a good number.

Q. State whether or not you personally knew anybody that was in the crowd there that night.

A. Well, I saw 2 that I knew.

Q. Well, did you know them that night, or what do you mean by that? Did you know them that night, or have you known them since that time?

A. I have known them since that time.

Q. Did you see anybody there that you knew that night?

A. Not till after my husband pointed out some parties there that I know now.

Q. You didn't know them at that time, though, as I understand you?

A. No, sir.

Q. Now, who did he point out to you there?

A. Why, he pointed out a man by the name of Mr. Galloway, and another one, Mr. Taylor.

Q. Have you seen those men since?

A. Yes, sir; I have seen them since.

Q. But you didn't know, of your own knowledge, that night who they were?

A. No, sir; I didn't know who they were *they*.

64 Q. All you do know is what your husband spoke to you and said at that particular time?

A. Yes, sir; I know that I saw them when he pointed them out to me. But I didn't know before.

Q. Well, where did you go after the crowd passed, Addie?

A. Why, we come on home; we went home.

Q. Went home?

A. Yes, sir.

Q. How long did you stay there?

A. Well, we staid there for all of them to pass, just to get out of reach; and we skeedaddled and went out—lit out for home.

Q. Did you see any other people running around there as you went home?

A. Oh, we didn't see any of account when we was leaving the scene.

Q. Which way was the crowd going—towards the county bridge or in some other direction?

A. Yes, sir; up the hill. That house sets on the corner of Walnut and 6th, and they were going up the hill.

Q. Are there any other members of your household besides you and your husband?

A. Out there?

Q. No; have you any other members?

A. I have two daughters; yes, sir.
Q. Were they with you that night?
A. No, sir.
Q. Where were they?
A. They were at home. One was sick.
Q. Well, you have stated now about all you know, and all
65 you saw that occurred up there that night?
A. Yes, sir.
Q. Had you heard of any trouble in town that evening before you went up there to that point?
A. No, sir; we never heard any.
Q. You didn't know anything about a lynching going to take place?
A. No, sir.
Q. And didn't think anything about that till you got there?
A. No, sir.

Cross-examination, questions by J. J. LYNCH:

Q. Those two men that you recognized were together, were they?
A. Sir?
Q. Were those two men together, Addie, that you have since recognized?
A. Why, they weren't together.
Q. They were not together?
A. No, sir; they was along in the crowd, though.
Q. Which one of the two was leading the crowd?
A. I don't know as either one was leading the crowd.
Q. I know; but which one was along in front?
A. Why, they was along in the crowd, just like those gentlemen [indicating] sitting there with you, kinder walking along the side.
Q. But one was sorter towards the front, and one kinder towards the back?
A. No, I don't say that. I say they was walking along the
66 side. This tall man, Mr. Galloway, was walking kinder out from the others.
Q. Out from them, towards the front, or——
A. No; I don't remember the front. I couldn't say whether he was at the front or back or not.
Q. He was away from the crowd, though?
A. No. Away from the crowd? He was kinder in it.
Q. In the crowd; mixed up in the crowd?
A. Yes, sir.
Q. Some of them were all round him?
A. Yes; just going on.
Q. All round him?
A. Well——
Q. How far was he from Mr. Taylor?
A. I couldn't tell how far Mr. Taylor was.
Q. But he wasn't with Mr. Galloway?

A. I saw him there.

Q. I know that, Addie, but we are trying to get at the details, you know.

A. I can tell you the best I know, that's what.

Q. We won't have any trouble about that.

A. Yes, sir; I'm telling you the best I know.

Q. You have seen Mr. Taylor since?

A. Yes, sir.

Q. And recognized him?

A. Yes, sir.

Mr. LYNCH. I wish the defendant, Mr. Taylor, would come around a minute.

(Here the defendant Taylor walked in front of the witness and stood.)

Q. Look at that man. Did you see him there that night?

67 Honest, now; honor bright.

A. That ain't the man I saw there that night; at least, he don't look as tall as that Taylor I saw.

Q. This man don't look as tall as the Taylor you saw?

A. No, sir.

Q. You didn't see this man there that night at all, did you?

A. Didn't see him?

Q. Yes; this one.

A. I seen one by the name of Taylor. I'd know him if I seen him again.

Q. He didn't look like this man, does he?

A. Put another'n up there, and let me see if I know him.

(A man rises and stands by defendant Taylor.)

Q. This is not the man?

A. I didn't say I seen this man.

Q. Look at this man carefully.

A. I am looking at him carefully.

Q. You didn't see him that night, did you?

A. I don't know; but I can tell the one if he gets before me.

Q. Can you tell the difference between this man and the other?

A. The other one seems to be taller than this one.

Q. What else?

A. He is taller, and a little larger man, I think.

Q. What other difference is there?

A. I don't know.

Q. Describe that other man.

A. Well, he is taller than this gentleman, and his hair seems to be dark. That man's hair isn't dark.

Q. The other man's hair was dark?

68 A. Yes, sir.

Q. What kind of a beard did the other man have on?

A. I didn't notice about the beard. I wasn't close enough to recognize whether he had a beard or not.

Q. You could not tell whether or not he had a beard?
A. No, sir.
Q. You couldn't tell whether or not his beard was long or short?
A. He didn't have a long beard.
Q. He didn't?
A. No, sir.
Q. About how long was his beard, Addie?
A. I couldn't tell. I couldn't say whether he had any or not. But if I would see the man I would know him, because he has been pointed out to me since.
Q. Who pointed him out?
A. My husband.
Q. When did he point him out to you since?
A. Oh, lots of times, in passing on the street.
Q. And he would tell you that that was the man he saw there that night; is that it? You and your husband would meet him, and your husband would point him out to you and say, "There's the man that was there that night," wouldn't he?
A. Well, no; before we saw him—we saw him several times; but what you said—course I couldn't exactly think the words we said; but I know we saw him several times since that.
Q. I know. But your husband would point him out to you and say that was the man, wouldn't he?
69 A. No; not every time.
Q. And you are sure you could recognize him?
A. Yes, sir.
Q. Stand up, over there, Squire. (Man stands up in the court room.) Did you ever see that man before?
A. I don't know whether I have ever seen him or not.
Q. Where did you ever see that man, if you ever saw him before?
A. Which man?
Q. That man standing up, that you are looking at now.
A. I don't know whether I ever saw him or not, I've seen so many people.
Q. You didn't see that man, did you?
A. I don't know. I might have seen him; I don't know.
Q. That is not the man you are trying to tell about, is it?
A. That isn't the man; no.
Q. That isn't the man your husband pointed out since?
A. No, sir.
Q. And you don't know whether you saw that man or not?
A. No; I did not.
Q. Turn round, this way. Did you ever see that man in his shirt sleeves?
A. Yes, sir.
Q. Did you see him that night?
A. No, sir.
Q. You didn't see him?

A. I don't guess he was there.
Q. Do you know that gentleman?
A. Yes, sir; I do know Squire Ware.
Q. He wasn't there, was he?
70 A. No, sir.
Mr. LYNCH. Squire, we have proven an alibi for you.
Q. How many other people did you see that night that you knew?
A. Oh, I seen a lot of people.
Q. That you knew?
A. Yes; I seen a lot of people—more than I want to see again.
Q. How many that you knew?
A. I don't know. I know them men, after my husband told me. I would know them now if I seen them.
Q. How many people were there?
A. I don't know; between fifty, somewhere, I guess. But I couldn't count them; neither did I try to count them.
Q. You didn't try to count them?
A. No, sir.
Q. Were there 500?
A. I don't know.
Q. Well, 300?
A. I don't know; I didn't try to count them.
Q. One thousand?
A. I don't know that either; I didn't try to count them.
Q. Was it 2,000?
A. I don't know whether there was or not; I didn't try to count them.
Q. There was just a tremendous crowd, big crowd of people?
A. Good many. Enough that we had to get out of their way and hide from them, I'll tell you that.
Q. Where was Johnson, the colored man? Was he towards
71 the front?
A. Where was he?
Q. Yes.
A. They had him there, I suppose.
Q. Did you see him?
A. No.
Q. You didn't see him?
A. No, I couldn't exactly see him; but I could see them crowding around somebody.
Q. You couldn't see him at all?
A. I never saw him.
Q. There was too big a crowd around the colored man for you to see him?
A. I couldn't see him at all.
Q. He was entirely obscured from your view? And did he say anything?
A. I heard somebody groaning and going on.

Q. But you didn't hear him saying anything, did you?
A. (Witness hesitates.)
Q. Answer that, can you?
A. I heard him groaning and going on.
Q. He just took it out in groaning and didn't say anything?
A. He said he never done it.
Q. That he "never done it?"
A. Yes, sir; that's what.
Q. Who else said anything there?
A. I don't know who else.
Q. Did anybody else say anything?
A. I couldn't tell.

Q. Did you hear Mr. Taylor say anything?
72 A. I didn't know whether it was Mr. Taylor or not.
Q. Did you hear anybody say anything besides the colored man?

A. They were all talking. I couldn't tell what they were saying. They were just mixed up around there; but I couldn't tell what it was.
Q. None of them said anything that you could hear and distinguish what it was?
A. I heard that Johnson fellow say that he never done what they accused him of.
Q. Did he say what they accused him of? Of what?
A. He said, "I never done it; I'm innocent."
Q. Did he say, "I never done it; I'm innocent?"
A. He said about that.
Q. "I never done it; I'm innocent?"
A. Yes, sir.
Q. What did any of the crowd say?
A. I don't know what they said.
Q. You didn't hear them say anything, did you?
A. Not particularly, I never.
Q. You didn't hear either of those two men you are talking about open their mouths; you don't know whether they opened their mouths or not; but they were there?
A. I saw them there.
Q. Which one was closer to you?
A. I don't know which one.
Q. They were all mixed up?
A. They were both closer than I wanted them to be then.

Q. All mixed up with the crowd?
73 A. Yes, sir; they were along with the crowd.
Q. Which one of the two men had hold of Ed. Johnson?

A. I don't know. There might not have been either one of them.
Q. Were either one of these two men near Johnson?
A. I couldn't see Johnson; but I could see them all walking along there.

Q. Don't you know they were off a ways from the crowd?
A. Off away from them?
Q. Yes.
A. They weren't just all mingled up; they were coming all along, and some after one crowd and like that.
Q. Don't you know that these men that you recognized were off away from the crowd, and had nothing to do with the mob?
A. I couldn't say they didn't have anything to do with it.
Q. Don't you know they were off away from them?
A. No; I don't know whether they were or not.
Q. Don't you know they were mixed up with the mob?
A. I don't know. They were along with them.
Q. Were they at the front of it, or at the side of it, or where?
A. They were there, walking along.
Q. You don't know where they were; whether they were in front or behind?
A. On the outside, this Mr. Galloway was.
Q. Was he on the left-hand side from you or right-hand side?
A. I don't know. He was off from the rest of the gentlemen, so I distinguished him.
Q. Away to one side?
74 A. Not away to one side.
Q. Just sorter to one side?
A. You know how wide the streets are, don't you?
Q. Yes; but the court doesn't know. How wide is the street?
A. It's wide enough for a good number of people to stand, if they draw pretty close together?
Q. They were all close together?
A. Yes, sir.
Q. What did either one of these two men have?
A. I don't know.
Q. You had been to church that night?
A. Yes, sir.
Q. Who preached?
A. We didn't have preaching; we had a call meeting.
Q. Did you stay till it was over?
A. No, it wasn't over when we left.
Q. What time did you leave?
A. I don't know what time it was I left; I left on account I had a sick girl at home, and I went home.
Q. So you went out there, and waited 25 or 30 minutes for a car?
A. I said 15, or it might have been longer. I never had any watch.
Q. Fifteen or 20 minutes or longer?
A. It might have been; yes, sir.
Q. Don't you know the cars go along there every 10 minutes?
A. I don't know. I have waited lots of times for them 15 or 20 minutes.
Q. Although you had a sick child at home, you went up 6th street to Market, to see what the excitement was?

75 A. Yes, sir.

Q. When you saw the excitement over there at the jail, did you think anything about Johnson?

A. No.

Q. You didn't see any crowd at 6th and Walnut streets?

A. That's where we saw the excitement.

Q. Which way was the crowd going?

A. Going up towards Walnut street. The 2 men were going up Market street. We saw the men running back and forth at the corner of 6th and Market, and went up there.

Q. Auntie, who did you first tell the story about——

A. About being there and seeing this?

Q. Yes.

A. We didn't tell no one, only ourselves.

Q. Didn't you ever tell anybody about seeing this thing?

A. No, sir.

Q. Didn't you ever talk to anybody about it?

A. Me and my husband.

Q. Did you ever talk to anybody else?

A. No, sir.

Q. Do you remember when he wrote to Mr. Sanford about it?

A. No, I don't. I didn't know till he had written.

Q. And when did he tell you he had written?

A. Why, I don't know when it was; I disremember; but sometime this winter.

Q. What did he tell you he had written?

A. I don't know what he told me he had written; but he told me he had written to him. He didn't tell me what he had written.

76 Q. He didn't tell you what he had written at all?

A. No.

Q. He just told you he had written, and that you were going to be a witness in it, didn't he?

A. No, he didn't say anything about me going to be a witness; he said he had written to the state's attorney, that's what.

Q. Then the state's attorney, or somebody else, came to see you, and you gave him a statement?

A. No, sir; the state attorney didn't come to see me.

Q. Who did come to see you?

A. Nobody.

Q. Nobody has ever been to see you there at all?

A. I seen this gentleman here, this man [indicating Mr. Penland].

Q. Who?

A. The state's attorney, if that's him.

Q. That's the first time you had been talking to anybody?

A. Yes, sir.

Q. No government officers have been there, and you have never given any statement?

A. Did you ever see any there?

Q. Answer the question.

A. No, sir.

Q. Then your husband is mistaken if he says an officer came there and got a statement from you?

A. To our house?

Q. Yes.

A. My husband didn't say he come to our house; because we
77 haven't been keeping house.

Q. Well, where you have been rooming?

A. Did my husband tell you that?

Q. Yes.

A. Well, yes.

Q. When was it he came and got that statement?

A. I don't know; I don't remember; I've been working so, I don't know.

Q. Why didn't you tell that a while ago?

A. What?

Q. About that officer coming and getting the statement. Why did you deny it at first?

A. I didn't deny it.

Q. You said you hadn't given any statement until we told you your husband had said so.

A. You asked me if the state's attorney had——

Q. Didn't I ask you about the government officers?

A. I didn't know whether he was a government officer or not.

Q. Didn't you say you had talked to nobody but Mr. Penland, this morning?

A. Well, I didn't talk to him.

Q. Well, they got your statement? How did they get your statement unless you talked to them?

A. What do you call a statement?

Q. You didn't want to tell that until you found out your husband had told it, did you?

A. Sir?

Q. Now, I said you didn't want to tell that until you found out that your husband had told it already, did you?

78 A. I tell the truth about everything I know.

Q. But you would not tell that until you found out your husband had told it; and then you came out and said it was so, didn't you?

A. You asked me if he came to our house, and I said we were not keeping house, we were rooming.

Q. And you didn't want to tell that; you wanted to make your statement tally along with your husband's?

A. Oh, no; I'm going to tell what I know, and that's all.

Q. And whatever he swore, you wanted to make yours fit right to it, too? You had never had any dealings with Mr. Taylor or Galloway yourself?

A. Didn't know them.
Q. They had never arrested you about anything?
A. No, sir.
Q. Were you mad at them about arresting your husband?
A. No, sir.
Q. You didn't care if he was arrested?
A. No, sir.
Q. Don't you know you were mad at all of these officers?
A. What would it do me to be mad?
Q. What?
A. What good would it do?
Q. How many times have you been arrested—but, first, how many times had they arrested him?
A. I don't know whether they had arrested him any.
Q. Don't you know he has been arrested a whole lot of times?
A. Well, what about it?
79 Q. Well, how many times?
A. I don't know. What about it?
Q. Have they arrested you?
A. Yes.
Q. What did they arrest you for?
A. Why, for fighting.
Q. What else?
A. That's all; for nothing, as I know of, else.
Q. Just tell the whole thing, now.
A. That's what it was.
Q. How many times have they arrested you?
A. I told you. I said once.
Q. How many times besides that one time?
A. Why, no other time besides the once.
Q. Who else has arrested you?
A. Some little constable. Let's see; I don't know his name; I don't remember; but it wasn't Mr. Galloway or Mr. Taylor.
Q. Who did they take you before?
A. Why, he took me before 'Squire Montgomery.
Q. What did they do to you?
A. He put me in jail for a little while.
Q. Put you in jail?
A. Yes, sir.
Q. How much did they make you pay for it?
A. Didn't make me pay nothing.
Q. Who were you fighting with?
A. I was fighting with a woman.
Q. About what?
80 A. About my restaurant; putting coal oil in my vituals.
Q. And they arrested you for that?
A. Yes, sir.
Q. And you never had any trouble with Mr. Galloway or anybody else?

A. No, sir; never.

Q. What was the woman's name that put coal oil in your vituals?

A. I don't know; she goes by the name of Mealy something; I don't know her name.

Q. Was your husband mixed up in that fight, Addie?

A. No, sir; he wasn't there. He was working.

Q. How old are your daughters?

A. Let's see; one will be 20 her next birthday and the other will be 21 her next birthday.

Q. Have either of them been ever arrested?

A. No, sir.

Q. Just you and your husband?

A. Yes.

Q. You say you don't know how many times your husband has been arrested?

A. No, sir.

Q. You remember the time he was arrested about the sewing machine, don't you?

A. Yes, I do remember it, distinctly.

Q. And you remember the time about the brass, don't you?

A. What brass?

Q. And then you remember the time about the Miller Brother affair, don't you?

A. Yes, sir; I do, distinctly.

81 Q. He paid out of that, didn't he?

A. Yes, sir; he did; they didn't have no case against him.

Q. That's the reason he paid out?

A. Yes, sir.

Q. Who arrested him that time?

A. Mr. Miller.

Q. Didn't Mr. Taylor arrest him one time?

A. I don't know.

Q. Isn't it a fact that one Mr. Taylor arrested him one time, and the other Mr. Taylor arrested him the other?

A. I don't know. One Mr. Taylor arrested him on the Ridge.

Q. What did he arrest him for there?

A. He arrested him because a man tried to rob us and take the stove away from us.

Q. What man was that?

A. Mr. Sanders down there.

Q. What did he charge him with?

A. I don't know. You can see Lawyer Hood, he was our attorney.

Q. That wasn't the sewing machine scrape?

A. No, sir.

Q. That was another matter?

A. Yes, sir.

Q. Did they charge him with larceny, up on the Ridge?

A. No, they didn't charge him with larceny; I dont know what it was.

Q. They charged him with taking the goods, didn't they?
A. I don't know.
Q. What was it they charged him with?
A. I don't know; they put him in jail.
82 Q. How long did they keep him in jail?
A. An hour or so.
Q. How much did that cost him?
A. Nothing at all, only just——
Q. Only what?
A. Only he had to pay Lawyer Hood. He was in there.
Q. These are the only three times you remember about him being arrested?
A. No, I don't know; about that and about the sewing machine.
Q. How many times besides that three times?
A. No more, as I can remember.
Q. These are all you have kept up with?
A. Yes, sir.
Q. How long have you been married to him?
A. I've been married to him about 12 or 13 years.
Q. How old are your daughters?
A. One of them will be 21 her next birthday and the other will be 20.
Q. Who were you married to before you married him?
A. Why, I wasn't married at all.
Q. How many illigitimate children have you?
A. Not any; these are my stepdaughters, sir, that I am speaking to you about; but I am claiming them.
Q. He was married before he married you, then?
A. Yes, sir.
Q. Where did you marry?
A. We married here.
Q. Well, you went home that night after you got scared?
A. Yes, sir; we sure went home.
83 Q. How did you get home?
A. Streets.
Q. What street?
A. On out Oak, and around out McCallie.
Q. How did you get to Oak street?
A. Just crossed across by the church, and went on across Oak street.
Q. You mean you went down Walnut street until you reached Oak street?
A. We didn't go down Walnut street.
Q. Which street did you go up?
A. The street up by the court-house.
Q. Straight from where you were up by the court-house?
A. Down across, and then——
Q. Did you go through the court-house yard?
A. No.

Q. How did you get around the court-house?
A. Around the street.
Q. Until you got to Oak street?
A. Yes, and turned out McCallie.
Q. And you came out Oak street?
A. No, out McCallie avenue.
Q. Who did you see on that trip?
A. It was pretty late; we didn't see very many, and we went direct home.
Q. After that crowd passed, you waited until they got out of sight before you left?
A. I don't know whether they were out of sight; they were out of safe distance from us.
Q. You waited until they went over the hill?
84 A. Yes, I guess so; I was getting away.
Q. Did you see Joe Franklin come along?
A. No; I didn't.
Q. Do you know Mose Stokes?
A. No; I don't know him.
Q. Did you see him that night?
A. I don't know. I wouldn't know him if I was to meet him in the road.
Q. Did you see anybody following that crowd?
A. I couldn't tell you, for, you see, I was in a hurry to get home.
Q. You were excited?
A. Yes, sir; I was.
Q. I want you to tell me where it was your husband pointed the men out afterwards?
A. I couldn't tell you; but when they passed there that night—directly after they passed he pointed them out to me; and when we were walking on the street a number of times he has shown them to me.
Q. Whereabouts?
A. I couldn't tell; I've walked about a good deal.
Q. Whereabouts?
A. It's been a number of weeks ago, I reckon.
Q. How many weeks ago?
A. I couldn't tell how many.
Q. Was it 3 weeks ago?
A. I couldn't tell. It might have been 3 weeks, and it might have been 4, and it might have been 5. I know he has pointed them out since.
Q. Somewhere between 3 and 5?
85 A. I don't know the definite time.
Q. I will ask you if it was as far back as six?
A. I couldn't tell you.
Q. Was it as far back as seven?
A. I couldn't tell you that, either.

Q. Well, was it this spring or this summer?

A. Long before that, you know. After the incident occurred last time, we were walking along the street, and he spoke about it.

Q. You can tell whether it was one week, or 6 or 7 weeks, couldn't you?

A. I couldn't tell. He may have said it sometime since that, and before. I couldn't tell how long it was—lots of times.

Q. How come him to point him out to you?

A. How come him to?

Q. Yes.

A. Why, he just told me, "There is them 2 men in that lynching that night."

Q. That was between 1 and 7 weeks ago?

A. I didn't say it was between 1 and 7; I said it was—I remember times my husband pointed them out.

Q. You don't know when that was?

A. I saw them in the year it was done, and these other years.

Q. You don't know what year; but every time he saw one he pointed him out?

A. No, I won't say he does that, either; no, sir.

Q. Well, does he or doesn't he?

A. No, he don't; not every time. He is with me sometimes, and sees one of them, and don't do that.

86 How well do you know Mr. Galloway?

A. Why, I don't know him so well at all.

Q. You know him when you see him?

A. Yes, sir; know him when I see him.

Q. You have seen him here to-day?

A. Sir?

Q. I say, you have seen him here to-day?

A. I don't know whether I have seen him here to-day or not.

Q. You don't know whether or not you have seen him in this room?

A. (Witness looks around in the room.) Yes, sir; I do.

Q. You think you have seen him?

A. Yes, sir.

Q. Well, you don't think you have seen Mr. Taylor?

A. Don't think I have?

Q. Yes.

A. (Witness looks around in the room.) I haven't seen the one I'm speaking of so far.

Q. Your husband has been practicing identifying Mr. Galloway to you for 2 years?

A. Been practicing identifying him?

Q. He has been pointing him out to you for 2 years?

A. No; he hasn't been pointing him out all the time; no.

Q. He has been pointing him out to you frequently?

A. I didn't know him before that. No; not since.

Q. When were you first called to be a witness in this case?

A. Well, you know, I didn't want to be a witness at all.
Q. Then it was your husband's fault?
A. No; I've seen it, and I'm going to tell the facts of it.
Q. You didn't tell it in the investigation heretofore?
87 A. No, sir.
Q. You didn't want to tell it then?
A. No, sir; we didn't.
Q. You didn't want to tell it till your husband got ready?
A. I just thought we would take an affidavit; I didn't think we would have to tell it at all, that's all.
Q. What made you say a while ago that you didn't give any affidavit?
A. Huh?
Q. What made you say a while ago that you didn't give any affidavit?
A. You said statement.
Q. What made you say you didn't give a statement?
A. I didn't say I didn't, exactly. When you asked me, I didn't answer your question till the attorney-general told me to answer, that's all.
Q. You didn't want me to know it, did you?
A. Well, I don't care whether you don't know it or not, or do know it. You know it now, don't you?
Q. You say they told you you would not have to come into court; that you could just give a statement?
A. No, sir; they didn't tell me anything about it. I told you I thought I wouldn't have to come.
Q. Why didn't you give the affidavit away back yonder?
A. Because I was afraid.
Q. And your husband told you to be afraid?
A. No; he didn't tell me no such.
Q. He said for you to be afraid?
A. No; I'm not 38 years old for nothing. He didn't tell me
88 that.
Q. Where were you when you first saw the crowd?
A. Where were we?
Q. Yes.
A. Clear going up there near to Mr. Kain's gate.
Q. Where was the crowd?
A. They were coming along there, somewhere between the jail house and 6th street; I couldn't tell exactly.
Q. How far were they from you?
A. I couldn't tell how far away.
Q. Were they coming out of the jail?
A. They were far enough for me to run up there and get out of sight of them.
Q. Were they coming out of the jail?
A. I don't know. Some of them might have been coming out of the jail; but I got away as quick as I could get in the yard.

Q. Had any of them passed 6th street?
A. No, sir.
Q. And you just waited for them to come?
A. No; we run up there, 'cause if we had crossed the street they would have seen us.
Q. And you were scared?
A. Yes, sir; I was.
Q. And excited?
A. Wouldn't you have been?
Q. I expect I would.
A. Well, then.
Q. Were you excited?
89 A. Yes, and I was scared.
Q. Scared and excited?
A. Yes.

Redirect examination, questions by J. R. PENLAND:

Q. I understood you to say you didn't want to be a witness in this case at all?
A. Yes, sir.
Q. You are here as a witness because you were summoned; is that the reason?
A. Yes; and because I knew it, and I felt it was right I ought to tell what I knew; if I saw anybody there I ought to tell it; that's all.

Recross-examination, questions by J. J. LYNCH:

Q. You thought the guilty parties ought to be punished, didn't you?
A. Yes, sir.
Q. And you felt like they ought to be punished?
A. Yes, sir.
Q. That's the reason you've told it, in order to get them punished?
A. Yes, sir; if it was anybody did the like of it, I want them punished.
Q. And you think they ought to be punished?
A. I think so. Don't you? You know more than I do.
90 Don't you think they ought to be? Yes, sir; I do think they ought to be punished.
Q. And you felt pretty bitter towards them about this, didn't you?
A. I haven't got anything to do with it; but I saw that, and I'll say what I know.
Q. You felt pretty bitter about that crime, didn't you?
A. It wasn't right at all.
Q. And you felt like they ought to be punished about it, and you felt pretty bitter towards the officers about it?
A. I felt bitter towards anybody that had anything with doing it—committing such a crime.

Questions by T. W. STANFIELD:

Q. Is your name Mattie?
A. Addie.

Q. Do you know the defendant, John Taylor, over there, one of the defendants in this case?

Mr. STANFIELD. Stand up, Mr. Taylor.

(Defendant Taylor stood, as requested.)

Q. Do you know that gentleman?

A. No, sir; I don't know him.

Q. That is not the man you say you saw?

A. No, sir; that is not the man.

Redirect examination, questions by J. R. PENLAND:

Q. Do I understand you to say that you think those who are guilty of that offense ought to be punished? Is that what you stated?

A. Yes, sir.

Q. You did not state any particular person?

91 A. No, sir.

Q. You do not know who is guilty of this, do you?

A. No, sir.

Q. You do not pretend to know?

A. No, sir; I do not.

Mr. PENLAND. Those are the witnesses for the Government now, so far as we know. Of course, there might be some witnesses in surrebuttal.

The COMMISSIONER. Under the terms of the order, the defendants are given an opportunity to introduce evidence, if they wish, in rebuttal.

Maj. CLIFT. We will ask your honor to adjourn until to-morrow morning, so as to give us time to get up our witnesses. You see, we did not know what was going to be proven, and had no opportunity to get our witnesses until these witnesses had testified.

The COMMISSIONER. All right; the court stands adjourned until to-morrow morning at 9.30.

92 CHATTANOOGA, TENN., *July 2, 1908.*

The further taking of testimony in this case was resumed pursuant to adjournment at 9.30 o'clock a. m.

Present: Jas. D. Maher, esq., commissioner; Jas. R. Penland, attorney for plaintiff; and the various attorneys representing the defendants.

HENRY A. LEE (colored), a witness for the plaintiff, was recalled by the defense, and testified as follows:

Recross-examination, questions by J. J. LYNCH:

Q. Henry, who were you at work for when this killing occurred?

A. E. M. Andrews.

Q. Mr. C. L. Ramsey was the manager at that time, wasn't he?

A. Yes, sir.

Q. And Mr. R. L. Killian was the bookkeeper and cashier?

A. Yes, sir.

Q. You were talking about being afraid yesterday?

A. Yes, sir.

Q. I will ask you if you didn't express yourself publicly, and freely, there in the store, in the presence of these gentlemen you were working for, as feeling very bitterly towards Captain Shipp and his deputies at that time, and for some days after the lynching occurred?

A. I don't remember.

Q. What?

93 A. I don't remember anything about it.

Q. I will ask you if you did not say, just a few days after that occurred, there in the store of E. M. Andrews, in the presence of Mr. Ramsey and Mr. Killian, that Captain Shipp was to blame for that lynching, and that he had brought him back here for the purpose of having him lynched?

A. I don't remember a thing about that.

Q. I'll ask you if you didn't accuse Captain Ship and his deputies of that, and use abusive language about it?

A. No, sir; I did not. I couldn't afford to do it in that house that way and work for them.

Q. I'll ask you if you didn't say to Mr. R. L. Killian, in the presence of him and others there in the store, the morning after the lynching, that you didn't see it?

A. I did not.

Q. Didn't you say that you and your wife were at church, and didn't see the lynching, and didn't know yourself who did do it, but that you knew other people who did know it?

A. There wasn't no person around there knows anything about that. I didn't tell 'em about being at church, or anything about it.

Q. You didn't mention any such thing?

A. No, sir.

Q. I'll ask you if you didn't say there to Mr. Killian that those negro lawyers ought to come back here and stay here, and that, if they would, you and the other negroes would stand by them?

94 A. No, sir; I didn't mention any such thing as that. God knows that. I don't think you can prove that by Mr. Killian, either.

Q. A. B. Oden, do you know him?

A. No, sir.

Q. I will ask you if you didn't say, in his presence, out at # 128 Fort street, here in the city of Chattanooga, since Christmas, that you "had it in" for Captain Shipp and his deputies; and that you would get even with them yet?

A. I didn't know that man——

Q. Answer the question.

Q. I didn't say anything like that.

Q. Didn't you say that neither Captain Shipp nor his deputies could arrest you; that you had a pistol and they couldn't arrest; that you would not let them arrest you?

A. I didn't say so.

Q. You worked for Mr. Geo. T. Balfour, didn't you?
A. Yes, sir.
Q. And for the P. C. Cramer Mfg. Co.?
A. No, sir.
Q. You have never worked for him?
A. No, sir.
Q. You don't know him?
A. I know of him.
Q. You don't know him?
A. Not personally; no, sir.
Q. You say John Taylor arrested you once?
A. Yes, sir; he did, once.
95 Q. I will ask you if you didn't tell him then that you would get even with him?
A. I don't remember it if I did. I didn't, because if I told him anything he would have hit me, I guess. I was very afraid of him at that time, I was.
Q. Didn't you and the officer have a fight when he arrested you?
A. Not a bit; there wasn't anything like a fight.
Q. You never had any scuffle at all?
A. No, sir; I went along with him.
Q. Just as if there hadn't been a word said about arresting?
A. Yes, sir.
Q. Everything was as peaceful as a May morning?
A. I was under arrest, and went on down and didn't give him a bit of trouble.

Redirect examination, questions by J. R. PENLAND:

Q. Speaking of seeing the lynching, I will ask you to state whether you did see the lynching, as far as the lynching was concerned?
A. I saw the crowd going, but I didn't see the lynching, the real thing itself.
Q. Just answer the question.
A. Yes, sir.
Q. Did you or not see the negro lynched over at the bridge?
A. I did not.
Q. How close were you to the bridge, about?
A. I was at least, in a rough guess, about 3 square or 4.
96 Q. Three or 4 squares from the bridge; that is as close as you were to it that night?
A. Yes, sir; 3 or 4 squares.

97 R. L. KILLIAN, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Where do you live, Mr. Killian?
A. I live out at St. Elmo at the present.
Q. In whose employ were you at the time this lynching occurred, of Ed. Johnson?

A. E. M. Andrews, 215 West 9th street.

Q. I will ask you if you know this darkey who has just left the stand, Henry Lee?

A. Yes, sir; he was working for me at the time.

Q. How long have you known him?

A. Well, I don't know; I guess about—I went to work there in October, I believe, 2 years ago last October; and I have known him since that time.

Q. What position did you have there in that store?

A. Well, Mr. Ramsey was the manager, and I was in the house—I was the bookkeeper and salesman in the house.

Q. I will ask you if you know that negro, Henry Lee's, character.

A. Yes, sir; I know it as——

Q. Well, is it good or bad?

A. It is pretty bad, I think.

Q. From that general character, would you believe him on his oath in a court of justice?

A. No, sir.

Q. I will ask you if you heard him talk the day after, or a
98 short time after, the lynching of Ed. Johnson?

A. Yes, sir; he came in the store the next morning and did a good deal of talking. He was working there at the time.

Q. Did he say whether or not he saw the men who did the lynching?

A. Henry said he was glad he didn't know anything about it. He said he and his wife were at church, and that they went on home from church, and that he didn't know anything about it, but that he knew parties who did know.

Q. I will ask you if he intimated then that he had seen Mr. Galloway or Mr. Taylor, or anyone else, in that crowd.

Mr. PENLAND. Don't state what he intimated: state what he said.

A. No: he didn't say anything about that.

Q. I will ask you if he said anything about Captain Shipp and his deputies.

A. Yes; he said that morning, and at various times, and more times than I could speak of, that it was a fixed scheme to lynch Ed. Johnson?

Q. A fixed scheme on whose part?

A. On the part of the people of Chattanooga, the sheriff, and all the balance of them.

Q. He did a good deal of talking?

A. Yes, sir; and he said that was why he had been brought back here. Henry did a good deal of talking.

Q. I will ask you to state whether or not he expressed a great deal of bitterness towards Captain Shipp and his deputies about it.

99 A. Yes, and everybody else; and for a good while the people there on West 9th street were afraid to say much.

Q. I will ask you if Henry himself was too afraid to express himself.

A. Not a bit; he was loud in it.

Q. I will ask you if he said anything about those colored lawyers who left here, what they ought to have done.

A. Yes; he said they ought to have staid here, and the negroes would have stuck to them.

Cross-examination, questions by J. R. PENLAND:

Q. You say you began work at E. M. Andrews last October, 2 years ago, Mr. Killian?

A. About that time; I think it was October.

Q. How long did you work there with them?

A. I believe it was in July I left there. He sold out in July or August.

Q. How long did Henry work there?

A. Well, he came in there, I think, in October or November, possibly, and worked there until—well, I believe that he left there just a little before I did, possibly; maybe not; I wouldn't be positive.

Q. He staid there until about the time the man closed out?

A. Yes, sir.

Q. What did he do?

A. He was salesman.

Q. What business was E. M. Andrews engaged in?

A. In the furniture business—installment business.

Q. About how many hands or employees were engaged in
100 that business?

A. Well, there was from 4 to 7 of us.

Q. From 4 to 7?

A. Yes, sir.

Q. Did you do a pretty extensive business?

A. Yes, sir; we did a right good business.

Q. Where was that business located in Chattanooga?

A. # 216 West 9th street.

Q. You hadn't known this colored man, Henry Lee, until he came in there, had you?

A. Not until he came to work for us.

Q. Who began to work there first, you or Lee?

A. I did.

Q. You say that he has a bad character?

A. Well, all that knows him that I know gives him that.

Q. Well, do you know why it is that Mr. Andrews would keep a man of that kind in a business of that sort, as a salesman in his house, when he was known to be of bad character?

A. Mr. Andrews didn't know him; he didn't know him at all.

Q. He didn't know him like you did?

A. He wasn't here at all, Mr. Andrews; he was in Greensboro, North Carolina; and he had establishments all over the country.

Q. You needn't go into the establishments all over the country. Who was the manager of the house here?

A. C. L. Ramsey.

Q. C. L. Ramsey?

A. Yes, sir.

Q. Do you know why it was that he would keep a man of as
101 bad character as Henry Lee had down there as salesman of that business house in Chattanooga?

A. Well, I'll tell you. He collected money on the outside, and failed to turn it in; and Mr. Ramsey was trying to get even with him that way.

Q. He kept him after he actually learned that he was doing that?

A. After he was stealing; yes, sir.

Q. You knew he was a thief, and you now say to the court that he kept him how long after he knew that?

A. I don't know—a month or so, probably.

Q. A month or so?

A. Yes, sir.

Q. And never discharged him at all, but kept him there until he closed out the business?

A. I think he did discharge him.

Q. You think he did? Do you know that he did?

A. Well, yes; to the best of my knowledge, he did.

Q. Do you know that he did discharge him? You said a while ago that you didn't know whether he staid until he closed out or not.

A. Well, the matter he had charge of wasn't all settled up, and hasn't been yet, I don't think.

Q. Do you know that it has not?

A. Well, after he left there—after he sold out—the business was turned over to the other parties. That's all I know about it.

Q. You don't know whether it has been settled or not, do you?

A. Lee's accounts?

Q. Yes.

102 A. He never did pay it up.

Q How do you know?

A. Well, it had not been paid when the business was turned over to the other parties.

Q. Do you know whether or not it was afterwards settled?

A. No, sir.

Q. So you don't know, as a matter of fact?

A. No, I don't know anything about it afterwards.

Q. That was 2 years ago? When was it Ed. Johnson was lynched?

A. Oh, I don't remember the date.

Q. You don't remember it at all, do you?

A. I don't remember the date.

Q. What month was it?

A. I don't remember. I don't believe I remember the month.

Q. What year was it?

A. Well, it was in the latter part of 1906, or the first of 1907.

Q. In the latter part of 1906 or the early part of 1907?

A. Yes, sir.

Q. You are pretty certain, now, of that date, aren't you?

A. I think that's right; yes, sir.

Q. Well, are you certain of it? That was a very noted event here in Chattanooga, wasn't it?

A. I think it was; yes, sir.

Q. And you would be as liable to remember that as anything else your attention might be called to, wouldn't you?

A. Well, it was 1906 or '7, sir.

Q. You can come within a year of it, you think?

A. I don't know exactly the month it was; I never recorded that; I know distinctly that Ed. Johnson was hanged over on the bridge.

103 Q. You know that?

A. Yes.

Q. If you can't remember what day of the month, nor what month, nor what year Ed. Johnson was hanged, your memory isn't very good, is it?

Al. Well, you know, men grow old; and they don't remember as well.

Q. Is that your case?

A. Well, I wasn't the lawyer in it; I didn't have anything to do with it; and I didn't charge my memory as to the time.

Q. I asked you if your memory was good about that?

A. Reasonably good, sir.

Q. Why is it you can remember the very words Henry Lee said the next morning in the house about this hanging——

A. Because I took objection to some of it.

Q. Wait a minute—when you can't remember these other things I've asked you about?

A. Well, sir, I objected to some of the things he said; very seriously objected, sir.

Q. You didn't resent it, I reckon?

A. Well, I objected to it.

Q. Who are you working for now?

A. I am working for myself.

Q. What business are you engaged in?

A. I am in the furniture and grocery business.

Q. You say that Lee is a man of bad character?

A. He certainly is.

Q. What do you judge by; what you know of him yourself?

A. Yes, sir.

104 Q. Anything else?

A. Yes, sir; those that know him that I know gives him that name.

Q. Well, now, mention some of the parties that you have heard speak of him in that manner?

A. Well, Mr. Ramsey, Mr. Balfour, and Mr. Odem, I think is his name.

Q. When did you hear them speak of him?

A. Well, at various times.

Q. Well, when did you last hear them speak about it?
A. Well, I heard some of them say something about it this morning.
Q. It is since this matter came up, since yesterday morning, that you have heard this talk about his bad character, isn't it, Mr. Killian?
A. No, sir; I never seen a one of them yesterday evening.
Q. Well, when did you hear Mr. Balfour, and where did you hear him, speak against Henry Lee?
A. Oh, well, he was in business over here on 8th street, I believe; before he moved over there, and at various times.
Q. Lee worked for him, didn't he?
A. I don't know that he did, sir; I don't know that.
Q. You don't know that he worked for him about 6 years?
A. I have heard Lee say so; I don't know.
Q. You don't know?
A. No, sir.
Q. These three men are all you have heard speak against Henry Lee's character?

A. Well, I don't know that I can call any others just at
105 this time.

Q. And with these three do you know that they have all had some personal difficulty with Lee?
A. No, sir; I don't know that.
Q. Don't you know that some of them have?
A. No, sir; I don't know that any of them have.
Q. You don't know that any of them have?
A. No, sir; unless the little difficulty we had, or Mr. Ramsey had, with him in the settlements.
Q. So 3 men are all you ever heard speak deleteriously of his character?
A. I don't know that it is; I expect there are others.
Q. You can't recall anyone else?
A. No, sir.
Q. These are all white men, this Ramsey and Balfour?
A. Yes, sir.
Q. You don't know of any personal troubles they have had?
A. I don't know a thing about that.

Question by J. J. LYNCH:

Q. Did you ever hear anybody say he had a good character?
A. No, sir.

Mr. PENLAND. We desire to note an objection to that, because that it not the rule the law prescribes for proving a man's character.

The COMMISSIONER. The stenographer will note the objection.

106 GEORGE T. BALFOUR, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Mr. Balfour, do you live in Chattanooga?
A. Yes, sir.

Q. What business are you in?
A. I am in the furniture business.
Q. What is the name of your firm?
A. George T. Balfour.
Q. Where is your store?
A. #817 Chestnut.
Q. I will ask you if you know that colored man, Henry Lee, who has been examined as a witness in this case?
A. Yes, sir.
Q. How long have you known him?
A. About five years.
Q. Did he work for you?
A. Yes, sir; about three years.
Q. Do you think you know his general character?
A. I think so.
Q. What is it?
A. Bad, bad as you can make them.
Q. Would you give him full faith and credit on his oath in a court of justice upon that general character?
A. Well, if he was going to die in 5 minutes, and after he took the oath I wouldn't believe him.

107 Cross-examination, questions by J. R. PENLAND:

Q. Did you ever have any personal difficulty with him, Mr. Balfour?
A. No, sir.
Q. Did you ever have any trouble with him in your business?
A. Not only that, but we allowed him to get behind on account of his credit work.
Q. Well, there were some business differences?
A. Well, only that I owed him some money when he quit, and some people he owed garnisheed him, and he sued me afterwards, and I showed the receipts to show that I paid the money, and that ended it.
Q. You had some lawsuits?
A. That was all; he brought it.
Q. You said he sued you—that was a lawsuit?
A. He sued me; yes, sir.
Q. And that was after he quit working for you?
A. Yes, sir; I owed him the money, I admit that; but the other parties had garnisheed him; and I have the papers and receipts yet. It is some $120 odd dollars.
Q. He worked for you about 3 years, you say?
A. Yes, sir.
Q. In what capacity?
A. About 2 years as drayman, I think; and then he sold goods out in town for possibly a year. I may not be exactly accurate in the length of time, but that is the best of my opinion.
Q. From your transactions with him is what you form your opinion from, and your estimate of his character?

108 A. Being in contact with the man for 3 years; yes, sir.

Q. That is the reason, and the only reason, you have for testifying about his character?

A. The only reason on top of the earth, sir. I have no ill will or hard feelings against him, or any other man. Just the general make-up of the man is why I am testifying as I am.

Q. And your testimony as to the fact that you would not believe him on oath is because of your business relations with him, and that alone?

A. And the general make-up of the man; yes, sir; from what I know of him.

Q. From what you know of him yourself?

A. Yes, sir.

Q. And nothing else?

A. Nothing else whatever, sir.

Redirect examination, questions by J. J. LYNCH:

Q. Mr. Balfour, do you think you know the general estimate in which he is held by the people who know him best?

A. I think I do, sir.

Q. Is that good or bad?

A. It is bad.

Q. If you based your judgment alone from the general estimate in which he is held by the people who know him best, would you believe him on his oath?

A. I would not.

109 Recross-examination, questions by J. R. PENLAND:

Q. You stated a while ago that you made up your estimate solely and alone upon your own business transactions with him as to his character?

A. I say so yet, sir.

Q. Then you don't form your estimate of his character from what other people say?

A. If anyone should ask me the question, I know what I believe the people would say.

Q. Now, how many people that Henry knows and runs with have spoken about him to you?

A. Oh, several. I've heard it out there in the hall.

Q. When; to-day?

A. Yes, sir.

Q. When, before yesterday or to-day, have you heard anybody that Henry associates with, anybody on his line in the social world, speak against his character?

A. I don't know that I have heard anybody that he associates with speak against his character, because I don't come in contact with them; but I hear people who come in the store sometimes ask about where he is, and like of that. In fact, I got a letter from a colored man once, some 3 or 4 years ago, while he was in my employ——

Q. Well, I object to that.

A. Well, I was going to give you the general trend of the public, if you want to hear it.

Mr. LYNCH. Go ahead and answer it.

110 Mr. PENLAND. You would not insist on anything contained in the letter?

Q. Now, give us the opinion of the parties who know him in the store; who come in the store.

A. I can't give the names. I didn't charge my memory with that.

Q. Not a single person?

A. No, sir; but some of my collectors know him as well as I do.

Q. Outside of the parties who have spoken of him yesterday and to-day, you do not recall anybody?

A. Oh, I could not give you the positive names; but it is the general talk of those who know him.

Question by J. J. LYNCH:

Q. The general talk of all those who know him?

A. Yes, sir.

Q. Did you ever hear anybody say he had a good character?

A. No, sir; I did not.

Question by J. R. PENLAND:

Q. But you can't give the names of any of them?

A. No; I never charged my memory with any of them, sir.

111 P. C. CRAMER, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Mr. Cramer, where do you live?

A. #725 Boyce street.

Q. How long have you lived in Chattanooga?

A. Twenty-three years the 23rd of April.

Q. Where did you come from here, Mr. Cramer?

A. I am from Ohio, where they raise Presidents.

Q. You have been a magistrate here, haven't you?

A. Yes, sir.

Q. You are a Republican in politics?

A. Sure.

Q. I will ask you, Mr. Cramer, if you know this colored man, Henry Lee, who was on the stand yesterday?

A. I do.

Q. How long have you known him?

A. Oh, I've known Henry, I expect, about 8 or 10 years—say, 8 years.

Q. Did he ever work for you?

A. He did.

Q. How long did he work for you?

A. He and his wife both worked for me last winter, some 4 or 5 months.

Q. Do you think you know his general character?

A. Sure.

Q. Is it good or bad?

112 A. I don't see how it could get any worse.

Q. From that general character would you believe him on oath?

A. No, sirree; no, sir; I would not take a drink of water he would handle. He hates white people. I have heard him say so.

Q. I will ask you if you think you know his general estimate, the estimate in which he is held by the people who know him best?

A. Everyone he has worked for say they can't find anything to excel him. He's a diamond in the rough.

Q. Do you know his wife?

A. Sure.

Q. Do you think you know her general character?

A. Just as bad as his. I think they just trot right along together.

Q. Would you believe her on her oath?

A. No, sir; not by any means.

Cross-examination, questions by J. R. PENLAND:

Q. You have known Henry 10 or 12 years?

A. I think it is that long I have seen him around town here.

Q. Have you been well acquainted with him all that time?

A. Always by sight, until he came to work for me.

Q. What did he do for you?

A. He took orders for suits of clothes, and she sold skirts for me.

Questions by J. J. LYNCH:

Q. What is your business, Mr. Cramer?

113 A. I am in the clothing business.

Q. What is the name of your firm?

A. Cramer Manufacturing Company.

Questions by J. R. PENLAND:

Q. You say you employed him as salesman?

A. Yes, sir; he took orders for me for clothing.

Q. Did you employ his wife as salesman?

A. She was taking orders and selling skirts for me.

Q. Did you employ anybody except colored people as salesman?

A. Oh, yes; yes, sir.

Q. How many colored people did you employ?

A. They were the only ones I had.

Q. They were the only ones you had?

A. Yes, sir.

Q. How long did they work for you?

A. Some 3 or 4 months.

Q. Three or 4 months?

A. He had what we called a side line. I got him one of Bowen's sample books, and he carried that as a side line. He was working for some furniture house here, and he said he could get orders for clothing, and he got some orders.

Q. What trouble did you and he have in winding up the business?

A. I found that everywhere he made sales he would misrepresent it to me. He would sell at one price and turn in another.

Q. What was the upscut of it, after you settled?

A. The upscut was he got the money and I got beat.

114 Q. Did you have a lawsuit over it?

A. No, sir.

Q. You had a fuss?

A. I didn't quarrel with him about it.

Q. You and he had some words, didn't you?

A. I just told him I wanted him to bring my book in; that I didn't want him to work for me any more. He got away ahead of his commission on me.

Q. You insisted he got too much money?

A. He would sell goods at any price; and when I closed up the trade I found the sale was under price.

Q. You claimed more than he turned in?

A. No; I have one price, you know, and he never would hold that, just so he got the money on it.

Q. You mean he would sell under price sometimes?

A. Yes, sir; all the time. The thing was marked, and he would report the sale all right, but the price never was right.

Q. Well, when was it he closed out business with you?

A. Sometime after Christmas.

Q. Last Christmas?

A. Yes, sir.

Q. You never knew anything about his general character up to that time?

A. Yes, I have heard him spoken of.

Q. How was it before that?

A. Well, some said he was all right; some said he wasn't.

Q. If some said he wasn't, why was it that you employed a man whose character you knew was bad?

A. His wife first worked for me, and then he wanted the

115 sample book. There was nothing he could get hold of at that time, and the sample book was furnished by the company.

Q. Answer the question, will you?

A. I think I have.

Q. I asked you why you employed him after you knew he was a man of bad character?

A. There was nothing of any value w[illegible]t into his hands.

Q. Well, you were interested in the amount of sales that he would make, weren't you?

A. Sure.

Q. You were interested to that extent?

A. That's exactly right. That's why I got rid of him.

Q. Why was it, if you knew his character was bad, that you employed him?

A. Just as I said a minute ago; there was nothing of any value went into his hands. These sample books went into our hands gratuitously, and I got one for him. And when I was settling up the sales I found he was selling lower than it was marked in the book.

Q. That was your only trouble with him, wasn't it?

A. Oh, no, no; you will find others will tell you he isn't right.

Q. Who have you heard say his character was bad generally—his reputation?

A. Well, I have heard Mr. Balfour.

Q. Mr. Balfour?

A. Oh, yes.

Q. He was in here a few minutes ago?

A. Yes.

116 Q. When did you hear him say that?

A. I've heard him to-day.

Q. Did you ever hear him say so before to-day?

A. Never talked to him on the subject.

Q. So, since this matter came up, you have heard Mr. Balfour talking about it?

A. Yes, sir.

Q. Who else?

A. Mr. Ramsey.

Q. He is a witness here to-day?

A. Yes. I have talked to him before.

Q. When?

A. Long in the winter he asked me if he wasn't working for me, and I told him he was.

Q. Well, I didn't ask you for the conversation.

A. Well, you asked me——

Q. Well, he gave him a bad name?

A. Yes.

Q. That's one?

A. Do you want to know what he said about him? He said he was as crooked as a rail fence.

Q. Did he use that language?

A. Yes, sir.

Q. He did?

A. Yes, sir; and he also said he was as crooked as a snake.

Q. Did he quit working for you then?

A. No, sir.

Q. How long after that did he work for you?

A. Oh, I can not say; it might have been a month or two.

Q. After he told you all about him, you still allowed him to

117 work for you?

A. I thought I had a pretty good head on myself, and was able to watch him; but sometimes we are mistaken.

Q. You kept him in your employment after you found out he had a bad character?

A. Well, I thought I had him all right.

Q. You had a good cash business?

A. No; credit business.

Q. Did anybody else say anything about him?

A. Mr. Andrews, I think, will tell you——

Q. He is a witness here, isn't he?

A. Yes.

Q. They are all witnesses; anybody else?

A. Yes; there was a Mr. Newman, I think, will tell you he is pretty crooked.

Q. Where does he live?

A. He is here in town.

Q. Is he summoned as witness?

A. I presume so.

Q. And you have talked to him this morning?

A. Oh, yes.

Q. Did you ever hear Newman speak of him before this morning?

A. Yes, sir.

Q. When?

A. Well, Mr. Newman is the gentleman that works for me.

Q. He works for you now?

A. Yes, sir; he works for me; he is my collector.

Q. Did you suggest his name as witness in this case?

A. I might have done that; yes, sir.

Q. Who else did you suggest as witness against this man?

118 A. Why, I told them what Mr. Ramsey had told me.

Q. Who else?

A. That's all.

Q. Who did you tell that to?

A. I told Mr. Kirklin.

Q. Was he the officer?

A. I presume so.

Q. And you are interested enough in this matter to go around and hunt up witnesses in this case?

A. I am interested enough in this to look out for the white people, and tell what I know about the negroes.

Q. You are very much against the negroes, aren't you?

A. A good negro is all right; I consider him a bad one.

Q. You are very much against him, then; feel very bad against him?

A. That much.

Q. Your feelings are not good towards him? That's true, isn't it?

A. Why, sure not.

Redirect examination, questions by J. J. LYNCH:

Q. He has asked you about your feeling. Your feeling is in sympathy with the good negroes and against the bad ones?

A. There are lots of good negroes.

Q. And you are against the bad and in favor of the good white people?

A. I don't stand up for none of them if they ain't right.

119 Q. And you don't want the white people condemned on the testimony of such a negro as he is?

A. No, sir.

Q. Any more than you would want the darkies condemned on the testimony of a bad white man?

A. Not a bit; just same.

Q. Now, he has gone into the details of this man's character. I will ask you if he was truthful?

A. No, sir; he was not.

Q. I will ask you if he was peaceable or vicious?

A. Well, I never had any trouble with him.

Q. I mean, did you ever hear him abuse people, and talk about them?

A. I heard him say several times, in my shop down there, that when Mr. Shipp and his deputies got through with Uncle Sam they'd get a plenty. I've heard him say that several times.

Q. He seemed to be very bitter towards them?

A. He is. He's a white man hater.

120 C. L. Ramsey, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Where do you live, Mr. Ramsey?

A. My place of business?

Q. Yes.

A. No. 434 Market street.

Q. What business are you in?

A. The furniture business.

Q. What business were you in at the time of the lynching of Ed. Johnson?

A. I was manager for a furniture store, E. M. Andrews, No. 216 West 9th street.

Q. I will ask you if this colored man, Henry Lee, was in your employ at that time?

A. Yes, sir; he was.

Q. I will ask you if you heard him talking anything about the lynching, or expressing any feeling toward Captain Shipp and his deputies?

A. Yes, sir; I did.

Q. Was his feeling friendly or hostile towards Captain Shipp and his deputies?

A. Very hostile. Very hostile towards all white people at that time.

Q. How long have you known this man, Henry Lee?

A. In the neighborhood of 8 years—7 or 8 years.

Q. Do you think you know his general character?

121 A. Yes, sir; I ought to. I have been associated with him in several places in business. He once worked for the man I worked for for about 6 years; then he has worked for me twice.

Q. Do you think you know his general character?

A. Yes, sir.

Q. The general estimate in which the people hold him who know him best?

A. Yes, sir.

Q. Is that general character good or bad?

A. Well, sir, it is bad.

Q. From that general character would you believe him on his oath?

A. No, sir; I would not.

Cross-examination, questions by J. R. PENLAND:

Q. How many years do you say you have known him, Mr. Ramsey?

A. In the neighborhood of 7 or 8; I couldn't say positively how long.

Q. When did he first work for you?

A. It has been about 3 years ago, I think.

Q. About 3 years ago?

A. Yes, sir; then he has worked for me since.

Q. How long did he work for you the first time, Mr. Ramsey?

A. About 6 months, I think; possibly longer.

Q. What did he do?

A. Why, he sold goods, small goods; that is, curtains, clocks, rugs, and took orders for goods out in the city.

Q. Did you have any trouble with him when he quit work-

122 ing for you that time?

A. Yes, sir; I had some little trouble with him; I couldn't depend on him. He was a terrible drunkard—always drunk; and he would go out and take the goods out, and if he did sell them, why, he wouldn't sell them for the right price. He would sell them for anything the people were a-mind to pay for them. Then he would come back and turn in the sales right.

Q. I am not asking you for details. You say you had some trouble with him?

A. Yes, sir; in that way.

Q. How long was it until you employed him again?

A. It was about a year; nearly a year.

Q. What did he do then?

A. He had the same kind of work.

Q. The same kind of work?

A. Yes, sir.

Q. Do you mean to say to the court here that after you learned he was a man of bad character, as you have described, that you turned him off and then employed him again and put him in charge of your business, Mr. Ramsey? Why did you do that?

A. He wasn't in charge of it, sir.

Q. He was in charge of that kind?

A. I was the employer, and I held strict account of every article he carried out.

Q. Certain; but why was it? You say he was a man of bad character. Why was it you employed him a second time and put him out to do business for you after he made those crooked sales for you?

123 A. Well, the first time he worked for me he was in the habit of drinking, a terrible drunkard, and his wife took him out on Missionary Ridge——

Q. I am not asking you about that.

A. Why I employed him the second time he claimed he stopped drinking and wanted a second trial.

Q. You didn't have anything against him the first time except his drinking, as I understand?

A. Well, his dishonesty.

Q. Well, you were satisfied he was dishonest, then?

A. Yes, sir.

Q. Why was it you employed him the second time when you knew, according to your own statement, that he was a dishonest man? Explain that.

A. I have explained it.

Q. You were just willing to employ that kind of a man in your business? Is that what you mean to say?

A. I wanted to give him another showing; he said he had stopped drinking.

Q. Do you mean that drinking is dishonesty?

A. Well, when a man is always under the influence of liquor you can't put any dependence in him at all.

Q. You said that. But he was dishonest, too?

A. Yes; I contributed his dishonesty to his drinking at that time.

Q. Did you have any lawsuit or trouble with him in the windup?

A. No, sir.

Q. You did have some personal difficulty, though, in settling your accounts with him?

124 A. No, sir; he beat me then—beat the firm, at least—out of $50 the first time. But, mind you, it wasn't left to me for settlement; it was E. M. Andrews.

Q. I understand.

A. Andrews lived in Greensboro, North Carolina; and he said he was going out of business here, and just to let him have it.

Q. I am not asking you about what Andrews said. Just notice my questions, and don't talk so much. You did have some trouble,

as manager for Mr. Andrews, in settling up your accounts with this darkey, Lee?

A. Yes, sir.

Q. And never did get it settled up fully with him?

A. Only that way.

Q. And your estimate of him is what you have learned through these business transactions, isn't it?

A. Well, not altogether; I have known him for years.

Q. Yes; you have known him for years. But you are speaking, when you say you would not give him full credit on his oath as a witness, you are speaking, aren't you, of what you know of him in your transactions with him yourself?

A. Yes, sir.

Q. And not from what you have heard others say about him?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Your estimate is made up entirely from what you know of him yourself?

A. Yes, sir; from the dealings I have had with him, espe-
125 cially the last time he worked for me.

Q. And that alone?

A. Yes, sir.

Redirect examination, questions by J. J. LYNCH:

Q. Mr. Ramsey, if you had to judge the man by the general estimate of the people with whom he has dealt, even at best, wouldn't it still be bad?

A. Yes, sir; very bad.

Q. I will ask you if you had to judge from the estimate in which he is held by the people who know him and deal with him, would you believe him on oath from that?

A. I would not.

Q. You were asked about the business transactions with him. I will ask you if the men who have installment furniture businesses, such as Mr. Andrews and others, whether or not they have colored salesmen to go out and sell among the colored people?

A. Yes, sir.

Q. That was the kind of business he was doing?

A. Yes, sir; they go out and carry a sample, and take orders and make arrangements; and when they get their money they come in and buy.

Q. This man Lee is a smart, smooth-tongued darkey?

A. Very.

Q. Smooth and capable in that line?

A. He is a splendid talker.

126 Mr. PENLAND. We want to note an exception to the exceedingly leading character of the questions asked to this witness.

The COMMISSIONER. The stenographer will note the objection.

Q. But all of that is so?
A. Yes, sir.

Recross-examination, questions by J. R. PENLAND:

Q. How many people of his class, that he runs with, did you ever hear speak against his character as being bad?
A. Of his class?
Q. Yes.
A. Negroes?
Q. Yes, or any other people that he has done business with and associated with.
A. I don't exactly understand the question.
Q. Did you ever hear anything like a majority of the people that knew Henry speak of his character?
A. Oh, yes, sir; lots of times.
Q. You have heard a majority of the people, you think?
A. A majority of the people that have had dealings with him.
Q. I understand; but the majority of his neighbors and those who know him—did you ever hear them speak about his character?
A. No, I don't know any of them, only the ones he has been employed by.

127 Q. You only know 2 or 3 business houses, Mr. Ramsey, that you have heard speak of Henry and his business transactions?
A. Several; yes, sir.
Q. Well, how many?
A. Well, I may know 4 or 5, possibly.
Q. When was it, and who spoke about it?
A. The Bowen-Jumper Furniture Company, 216 West 9th street.
Q. When did you hear them speak about it?
A. On several occasions.
Q. And these others you have already mentioned?
A. Yes, sir. I have heard Mr. Loftin; he once drove a wagon for Mr. Loftin.
Q. You have heard those?
A. Yes, sir.
Q. You have not heard the people generally?
A. Well, I have heard other furniture men.
Q. Those he has been employed by?
A. Yes, sir.

128 JOHN E. TAYLOR, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Mr. Taylor, are you a constable of this county?
A. Yes, sir.
Q. Were you when the lynching of Ed. Johnson occurred?
A. Yes, sir.
Q. What is your full name, Mr. Taylor.
A. John E. Taylor.

Q. John E. Taylor?

A. Yes, sir.

Q. I will ask you if you were present when that lynching occurred, or in it?

A. No, sir.

Q. I will ask you if you walked with Mat Galloway, or anybody else, right behind the mob, from the jail down to the bridge?

A. No, sir; I did not.

Q. Where were you that night?

A. At the Odd Fellows' Hall, in Sherman Heights.

Q. How far is that from Chattanooga?

A. About 4 miles.

Q. Was the Odd Fellows' Lodge in session that night?

A. Yes, sir.

Q. How late did you adjourn?

A. I think we quit there about 10.15, as well as I remember.

Q. Was it regular meeting night?

129 A. Yes, sir; we meet every Monday night.

Q. I will ask you if you came to the city of Chattanooga that night?

A. No, sir; I did not.

Q. When did you first learn of this lynching?

A. The first thing I learned of the lynching was when I picked up a morning paper, at 'Squire Womack's office, at Sherman Heights, at the stand there.

Q. I will ask you if you have ever arrested this darkie?

A. Yes, sir.

Q. How many times?

A. Are you speaking of Henry Lee?

Q. Henry Lee; yes.

A. I arrested him one time.

Q. Did you have any trouble with him?

A. No, sir; I didn't have any particular trouble with him. I just had a warrant for him, I believe, for fraudulent breach of trust, about some things he bought from Sanders, on West 9th street—a second-hand store.

Q. I will ask you if he made any threats towards you about "getting even" with you?

A. Well, when I arrested him, he told me—I handcuffed him—I understood he was a bad negro, and I put the handcuffs on him. When I got up to the jail he said, "I'll get even with you!" just that way.

Q. Mr. Taylor, I'll ask you if you had been well for sometime before this happened?

A. No, sir.

Q. Had you been acting as constable for sometime before that?

A. I hadn't served a paper for 6 or 7 weeks, to the best of

130 my knowledge.

Q. You mean 6 or 7 weeks before the lynching?
A. Yes, sir. I had been down sick with the 'grippe 6 weeks—6 or 7.
Q. When was it you arrested this darkey?
A. Well, I arrested him—let's see; I can't tell the date exactly; but it has been several months ago.
Q. Since the lynching?
A. Oh, yes.
Q. Since the examination here before the commissioner?
A. Yes, sir.
Q. Last year?
A. Yes, sir.
Mr. PENLAND. I'll have to except to your leading questions. Ask him when it was, and let him fix the time.
The COMMISSIONER. The stenographer will note the objection.
Q. I will ask you whether or not it was after the lynching?
A. To the best of my knowledge, it has been about a year ago; something like a year ago. I can't tell you the exact date.
Q. I am talking about when you arrested this darkey.
A. Well, it has been something like a year ago since I arrested him.
Q. Mr. Taylor, can you bring us in this afternoon 2 or 3 members of your lodge who were with you that night?
A. Yes, sir.
Q. What is the name of your lodge, and the number?
131 A. Gem Lodge No. 14, Sherman Heights.
Q. I will ask you to state whether or not that is on the opposite side of Chattanooga from the bridge, where this lynching occurred?
A. Sherman Heights?
Q. Yes.
A. Yes, sir; 4 miles, I guess, from where the bridge is. I don't say it is that far from the bridge, but that far, 4 miles, from town; about that.

Cross-examination, questions by J. R. PENLAND:

Q. When did this lynching occur, Mr. Taylor?
A. Why, about the 19th of March, they say it occurred.
Q. When?
A. Well, I don't know just exactly when.
Q. What year was it?
A. It has been a couple of years ago—1906, I believe—along about before the primary election, 2 years ago, 1906.
Q. 1906?
A. Yes, sir.
Q. You say you were at home that night?
A. I was at the lodge that night.
Q. Do you live at Sherman Heights, Mr. Taylor?
A. Yes, sir.
Q. Did you live there then?
A. Yes, sir; I have been living there going on 31 years.

Q. It is about 4 miles from Chattanooga?

A. Yes, sir.

132 Q. And about 4 miles to the jail, did you say?

A. About 4 miles, I guess, from the jail to Sherman Heights—they call it about that.

Q. There is a street railway running between the two places?

A. Yes, sir.

Q. You come in and go back out on the street cars?

A. Yes, sir.

Q. And it runs about every 15 minutes?

A. Yes, sir; just about. The cars are scheduled that way.

Q. You say you had been sick?

A. Yes, sir; I had been sick with the 'grippe.

Q. How come you were out at the lodge that night, if you were sick, Mr. Taylor?

A. Well, sir, I was running at that time for justice of the peace, and I went to lodge that night. I hadn't been for some time, and I went. The doctor didn't want me to go; but I did go. I managed to get down there and back. I rapped up pretty good.

Q. Was it a regular meeting they had that night?

A. They have a regular meeting every Monday night.

Q. About what was the time that it took to discharge the work in the regular meeting?

A. Well, the Odd Fellows at Sherman Heights, they generally meet about 7.30 in the winter time; and we generally get through about ten or 10.30.

Q. Didn't you often get through earlier than that?

A. Well, we might possibly get through at 9.30, but nothing earlier than that.

Q. It all depends on the work you have to do whether you get through at 9.30, doesn't it?

133 A. Yes, sir.

Q. If you didn't have much work, you would get through an hour earlier?

A. Well, I don't know.

Q. You don't remember about that night, do you?

A. Yes, sir; I think it was a little after 10.

Q. What makes you think that on that particular night—do you remember? That was 2 years ago, according to your statement. How do you happen to remember?

A. Well, for the simple reason that we never get through sooner. Every lodge member that belongs to that lodge will tell you we never get through sooner than 10 o'clock.

Q. Well?

A. Well, I believe that night we didn't get through sooner than 10.

Q. You haven't been connected with this heretofore, have you, at all?

A. No, sir.

Q. And nothing to call your attention to whether or not the lodge lasted longer that night?

A. Nothing more than this: The next morning there was a darkie came to my house and told me——

Q. I am not asking you for conversations.

Mr. LYNCH. Let him finish his answer.

Mr. PENLAND. No, sir; I am not asking him for that.

Mr. LYNCH. Let him answer in his own way, and let the court rule on it.

134 A. You asked me why I remember that particular night, and now I'll answer it.

Q. If you have any legal reason, all right.

A. I have; I'm trying to defend myself here. That next morning when I picked up the paper I seen that Ed. Johnson was lynched, and made the remark the same day to 'Squire Smith—I said, "Well, I guess it's a good thing I was at the lodge last night." I was a candidate, and they ran it on me that I was in the mobbing; and that was the only thing that called my attention to it. And there was a darkie came to me——

Q. I didn't ask for conversations.

Mr. LYNCH. Tell it; tell it.

Mr. PENLAND. We object now to all hearsay testimony of the witness with other parties.

The COMMISSIONER. Note the objection.

A. Well, I can bring in the colored man, if you want me to.

Mr. LYNCH. Tell it.

A. He came to me—they were telling that I was in the mob, and I referred him to four or five lodge members, and he went and investigated and told me he was satisfied I wasn't in it.

Q. Now, as to that much. You say you hadn't thought of the matter since that time, especially, had you? You were not made a defendant in the matter?

A. No, sir.

Q. And never have had any connection with it?

A. Never have.

Q. Until this time?

A. No, sir.

135 Q. Now, what independent fact is there that calls your attention to the hour of adjournment of the lodge that night?

A. Because, I told you, we never got through any sooner than 10 o'clock.

Q. Never get through sooner than 10?

A. Never have, any night I ever attended; and I have been up there as late as nearly 12. I never get out earlier than 10. That night was a very cold night, and there weren't many members out, and we got out about 10 or 10.15—something like that. I remember just as well as to-day about the matter. I got there——

Q. Well, it was about 10 o'clock?

A. It was about 10.30, 10.15; along there.

Q. It might have been? You didn't look at your watch; you don't remember that?

A. No.

Q. It might just as well have been 15 minutes before as after?

A. It might have; but I think it was 15 minutes after 10. It seems to me I heard some of the members say it was after 10 o'clock, and we had better adjourn and go home.

Q. That was 2 years ago, you say?

A. Yes, sir.

Q. You say you never arrested this man but the one time?

A. That's all I remember.

Q. And he got in a racket over some furniture, or something like that?

A. Yes, sir.

Q. And the matter was compromised and settled without any trial?

136 A. I think he was bound over to court, as well as I remember. I don't know what became of the case. I never followed it up. I just simply done my duty as an officer and served the warrant in the case.

Q. And you don't know the result of the proceedings?

A. No, sir.

Q. And you don't know the date of that—what month it was?

A. I can't tell you; I can get the record at 'Squire Webb's court.

Q. You think it was about a year ago?

A. I think so.

Q. Was it before or after the taking of the testimony in this case?

A. It was after.

Redirect examination, questions by J. J. LYNCH:

Q. What did you arrest Henry Lee's wife for?

A. Oh, same thing I did her husband. Mr. Sanders swore out a warrant for Henry Lee's wife and Henry Lee, too.

Q. Charging them with fraudulent breach of trust?

A. I think that was it. Anyway, they were disposing of some property they had bought from Sanders.

Q. Talking about seeing the darkies out there, I will ask you to state whether or not you were candidate for magistrate at the time this lynching occurred.

A. Yes, sir.

Q. And whether or not there was a large colored vote in your district.

137 A. Yes, sir.

Q. And you needed their votes?

A. Yes, sir.

Q. And tried to get their votes?

A. Yes, sir.

Q. You are a candidate now, aren't you, Tom?

A. Yes, sir.

138 A. V. ODEM, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Where do you live, Mr. Odem?
A. #129 Mitchell avenue.
Q. What business are you in?
A. Portrair business.
Q. Are you with the Nashville Portrait Company?
A. Yes, sir.
Q. I will ask you, Mr. Odem, whether or not you saw this darkey, Henry Lee, on the stand here?
A. Yes, sir.
Q. I will ask you to state whether or not, since last Christmas, in Chattanooga, Tenn., at or near 728 Fort street, you heard Henry Lee say, in substance, that he had a pistol and no officer could arrest him?
A. Yes, sir.
Q. And that he had it in for Captain Shipp and his deputies?
A. Yes, sir.

Cross-examination, questions by J. R. PENLAND:

Q. Did you hear the testimony of Henry Lee?
A. No, sir; which you mean?
Q. Henry Lee; did you hear his testimony?
A. This morning?
Q. Yes.
139 A. Part of it, I think, before they told us to go out under the rule.
Q. You heard all of it, didn't you? He went off the stand before you went out, didn't he?
A. No, sir.
Q. Where and when did you say that statement was made?
A. Well, it was since Christmas; I don't remember the date now.
Q. This last Christmas?
A. Yes, sir; and it was, I think, #728 Fort street.
Q. Ford?
A. Fort—F-o-r-t.
Q. Who else was present?
A. Well, there was a fellow by the name of Cary, or Cray, or McRhea.
Q. Where does he live?
A. He was living there at the time; I don't know where he lives now.
Q. Was anybody else present?
A. No, sir.
Q. How come him to make this remark, do you know?
A. Yes, sir; I went there to collect off this fellow McRee, and he didn't have no money. He said his brother got in jail for shooting craps——

Q. I don't care for any conversations.

A. Well, I want to tell you how this fellow told me about it.

Q. That didn't bring Henry in; tell about that.

A. He was talking about this fellow getting into trouble, this other colored fellow, and he said there wasn't no officer could arrest him—nobody could arrest him.

140 Q. Henry said that?

A. Yes, sir; he said they couldn't draw no little pistol on him and scare him; he wasn't afraid of the pistols; and he couldn't be scared at all.

Q. As a matter of fact, he had been arrested before that, hadn't he?

A. I don't know.

Q. You don't know about that?

A. No, sir.

Q. So, if he said that, and had been arrested, he was saying things different from the facts?

A. Yes, sir; I guess so.

Q. That is the only thing you ever heard him say about this transaction?

A. Yes, sir.

141 JOHN E. TAYLOR, a witness for the defendants, was recalled, and testified as follows:

Redirect examination, questions by J. J. LYNCH:

Q. Mr. Taylor, this is a question I didn't know about when you were on the stand before. I will ask you to state whether or not, on that night, after the lodge—where did you go after the lodge on the night of the lynching?

A. I went right home. After the lodge was over, I went right direct home; because it was cold, and I was sick, and I was wrapped up well.

Q. Who did you see after the lynching?

A. Dr. Bearden came to my house. I had had a pretty bad spell of sickness, and when I got home I felt bad and had a pain in my side, and told my wife to send for Dr. Bearden, and he come up.

Q. I will ask you to state whether or not you live in the same block that the lodge hall is in?

A. No, sir; I lived at that time right across the Southern Railroad.

Q. How far was that from the hall?

A. Well, about 2½ blocks or 3.

Q. You say Dr. Bearden came to see you that night?

A. Yes, sir.

Q. You telephoned him after lodge?

A. My wife telephoned him.

142 Recross-examination, questions by J. R. PENLAND:

Q. Was that the first time you had been up after the sickness?

A. That was the first time I had been out, only I went for Dickson to shave me twice after I was sick; and I believe I went down as far as the railroad crossing that day. I wanted some exercise.

Q. You went out and staid about 3 hours and a half that night, and that was the first time you had been out at night?

A. Yes, sir; I went to the hall, you know.

Q. It was a bad night?

A. Yes, sir; I think it was.

Q. It was both raining and cold?

A. It was awfully cold; I don't know whether it was raining or not.

Q. You walked to the hall?

A. Yes, sir.

Q. And back?

A. Yes, sir.

Redirect examination, questions by J. J. LYNCH:

Q. Mr. Taylor, you sometimes have trouble with your lungs?

A. Yes, sir; I have been having trouble at times.

Q. You and your wife are both uneasy about your lungs?

A. The truth of it is, the 'grippe nearly ran into pneumonia fever, and I was just able to get up and stir around.

143 Dr. H. K. BEARDEN, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Dr. Bearden, are you a practicing physician?

A. Yes, sir.

Q. Where were you practicing medicine at the time of the lynching of Ed. Johnson?

A. Sherman Heights.

Q. Do you know John Taylor, who has just been on the stand—John E. Taylor?

A. Yes, sir.

Q. I will ask you to state whether or not he was a patient of yours at that time.

A. Yes, sir; he was.

Q. He had been sick at the time of this lynching?

A. Yes, sir.

Q. How long had you been treating him?

A. I had been treating him about four or five weeks.

Q. I will ask you, Doctor, if you saw him on the afternoon of the lynching, before the lynching?

A. Well, about 5 o'clock, between 5 and 6, probably—it was about 5 o'clock.

Q. I will ask you if you had any conversation with him about going to the Odd Fellows' lodge? If so, state what it was.

A. Yes, sir; I did. He told me he wanted to go to the Odd Fellows' lodge.

144 Mr. PENLAND. We object to that outside conversation. This man is not a defendant, and it is mere hearsay conversation between this man and the man Taylor.

The COMMISSIONER. Note the objection.

Q. He meant to go to the lodge, and asked me if it would be all right for him to go. I told him it would be advisable for him not to go, on account of a pleuretic complication. He had pains in the pleural. But he went to the lodge, anyway; and I was called again about 10.30.

Q. That night?

A. That night; yes, sir. And I was there at his house from about 10.30 until 11, or a little after 11. It was in the neighborhood of 11 o'clock when I left there. I went there on account of his having this pleurisy, pleural pains.

Q. You treated him that night?

A. Yes, sir.

Q. That was a chilly night; cold night?

A. I don't remember.

Cross-examination, questions by J. R. PENLAND:

Q. Did you go to the lodge that night, Doctor?

A. No, sir; I did not.

Q. You saw him about 5 o'clock in the evening?

A. Yes, sir; in the afternoon.

Q. That was before dark?

A. Yes, sir.

145 Q. And you didn't see him any more until about 10.30?

A. No, sir.

Q. Did you have an agreement with him, at the 5 o'clock call, that you would call again at 10.30?

A. I don't think I did; no, sir. I didn't have any agreement that I was to call any more until the next morning.

Q. Well, did you go on account of having a call, or did you go of your own accord at the 10.30 call?

A. I was sent for.

Q. You were sent for?

A. Yes, sir.

Q. You hadn't seen the witness Taylor since you had seen him about 5 o'clock until then?

A. No, sir.

Q. Was he worse?

A. Yes, sir.

Q. Considerably worse?

A. Yes, sir.

Q. And you didn't know what had caused it, only you judged by his being out?

A. Yes, sir.

Q. That was the first time he had been out?

A. Why, he had been out before. I tried to keep him in bed; but he would get up, anyhow, whether I wanted him to or not. He had been up and out that day, and he had been out the day before. He got up several days and went out somewhere.

Q. But on this occasion he had been out several hours?

A. Well, I don't know what time he went to the lodge; I
146 know he had been to the lodge that night.

Q. You don't know he did, only what he said about it?

A. That's all I know.

Q. You were not there, and didn't see him after 5 o'clock?

A. No, sir; not until 10.30.

Q. Well, what condition was he in when you called at 10.30? Did he seem to be exhausted and suffering considerably?

A. Well, sir, he was just suffering from an acute pleurisy—pain in the pleural.

Q. You didn't know how long he had been back home——

A. No, sir; I did not.

Q. ——when you called?

A. No, sir.

Redirect examination, questions by J. J. LYNCH:

Q. Doctor, I will ask you to state whether or not it takes nearly an hour to go from the city here to Sherman Heights on the car?

A. It takes about 35 or 40 minutes; about 40 minutes, I think, from the court-house.

Q. And the car runs about every half hour at that time of the night?

A. About every 20 minutes, or 30, yes, sir.

Recross-examination, questions by J. R. PENLAND:

Q. Isn't it about every 20, instead of every 30, Doctor?

147 A. I don't remember what it was then.

Q. You haven't a 30-minute schedule at all, have you?

A. We have a 20-minute schedule in the day; and I think, now, 30 minutes at night.

Q. You don't remember what it was then?

A. No, sir; I don't remember.

148 J. N. PAYNE, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Where do you live, Mr. Payne?

A. My business is #1421 East End avenue.

Q. What is your business?

A. The installment business.

Q. Installment furniture business?

A. No, sir; dress goods.

Q. I will ask you if you know this colored man, Henry Lee, who has been on the stand in this case.

A. I know him; I don't know much about him.
Q. I will ask you if you know his wife, Addie Lee.
A. Yes, sir.
Q. How long have you known her?
A. About 6 months, I think.
Q. I will ask you if she worked for you.
A. Yes, sir.
Q. I will ask you if you think you know her general character; that is, the general estimate in which she is held by the people who know her best.
A. Well, yes; I think I do.
Q. Is that general character good or bad?
A. Pretty bad.
Q. From that general character would you believe her on oath?
A. No, sir; I would not.

149 Cross-examination, questions by J. R. PENLAND:

Q. You say she worked for you some?
A. Yes, sir.
Q. How long?
A. Why, she didn't work very long for us. We got shut of her as quick as we could.
Q. How long did she work for you?
A. I guess she was in our employ possibly 2 weeks.
Q. Two weeks?
A. Her work was so crooked we didn't keep her.
Q. Yes, yes; I didn't ask you about that. Well, you had some little trouble with her in settling up?
A. Yes, sir.
Q. Did you have a fuss or quarrel?
A. No; no fuss. I can tell you what the trouble was.
Q. I was just asking your feelings. Are they good or bad towards her now?
A. I haven't got anything against the woman.
Q. Nothing against her—and that is the only time you ever had anything to do with the woman?
A. Yes, sir.
Q. You never knew her, up to that time, in your life?
A. No, sir.
Q. About how long ago was that?
A. About 6 months ago, I guess.
Q. And you have never heard her spoken of much since?
A. Yes, right smart.
Q. When did you ever hear her character discussed?

150 A. Why, I have heard somebody talking about it just a few days ago.

Q. Did you hear some parties talking about it yesterday?
A. No, sir.
Q. This morning?

A. I didn't know anything about it this morning—I hadn't heard a word about it until they left word down there at the office for me to come up here.

Q. They learned that you had had some business difficulty with this woman?

A. They knew she had worked for us.

Q. That is the reason you were examined as witness?

A. They knew she worked for us.

Q. That was the only thing you ever knew about her in your life, this business transaction?

A. That's all.

Q. You do not pretend to say that you ever heard anything like a majority of her neighbors speak of her character?

A. All I ever heard speak of her didn't speak favorably.

Q. That doesn't answer the question. I say, did you ever hear anything like the majority of the people who know her speak of her?

A. I can't say as to that. I haven't got time to talk to the majority of them.

Q. And they haven't talked to you?

A. No; not the majority.

Q. The only ones you ever heard were just a few persons who have had a few business transactions with her?

151 A. Yes, sir; customers of ours.

Q. And that's all you know about it?

A. Yes, sir.

Redirect examination, questions by J. J. LYNCH:

Q. I will ask you to state whether or not you have ever taken out a warrant for that woman for larceny.

A. Yes, sir.

Mr. PENLAND. We object to that. If you want to prove anything of that kind, get the record.

Mr. LYNCH. There is no record, except the warrant.

Q. Has she ever been found under the warrant?

A. No, sir.

Mr. PENLAND. We object to that, your honor.

The COMMISSIONER. The stenographer will note the objection.

152 J. P. WEBB, a witness for the defendants, was duly sworn and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. I will ask you, 'Squire Webb, whether or not you are a justice of the peace of Hamilton County?

A. I am.

Q. I will ask you if you remember the occasion when John E. Taylor, the constable, arrested this colored man, Henry Lee, that was on the stand, and brought him to your office?

A. Yes, sir.

Q. I will ask you to state whether or not, in your presence and in the presence of John Taylor, he threatened to "get even" with him for doing that?

A. Well, I would not say that Mr. Taylor was there; but after he had been committed to jail he come back there in a day or so later and made such threats, that he would "get even" with him.

Q. When was that, 'Squire?

A. I can't remember the dates; I don't know when it was.

Q. State whether or not it was since the examination here a year ago in this matter?

A. I can't say; I don't remember.

Q. It was since the lynching, was it?

A. Oh, yes; yes, sir.

Mr. PENLAND. We want to note an exception to the testimony
153 of this witness; because there was no ground laid for his introduction.

Mr. LYNCH. Mr. Penland, that exception is well taken; but I want to bring back Henry Lee and make it competent, by laying a foundation for it. I don't suppose you would want me to recall the witness then, would you?

Mr. PENLAND. I might want to recall him myself.

Mr. LYNCH. Well, we'll call Henry Lee. Let him stand aside for the present. Then we can treat this as in.

Mr. PENLAND. Yes; if I don't see anything else I want to examine him about.

154 HENRY A. LEE (colored), a witness for the plaintiff, was recalled, and testified as follows:

Recross-examination, questions by J. J. LYNCH:

Q. Henry, I will ask you to state whether or not, a few days after you were arrested by Mr. John E. Taylor, the constable, and taken to the office of 'Squire Webb, you returned to the office of 'Squire Webb, and said to him that you were going to "get even" with Mr. John E. Taylor, the constable, for arresting you?

A. I did not.

Q. And you said nothing like that, in substance?

A. No, sir; I did not.

Q. You made no such threats?

A. I did not.

Mr. LYNCH. Now, we will treat the witness, 'Squire Webb, as having been introduced after this one?

Mr. PENLAND. Yes, sir; that will be all right. I don't make any question about that.

155 B. A. CLOSE, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Where do you live, Mr. Close?

A. I live on Missionary Ridge.
Q. Where do you do business?
A. #534 Market street.
Q. What is your business, Mr. Close?
A. Furniture business.
Q. I will ask you if you know this colored man, Henry Lee?
A. Yes, sir.
Q. Do you know his wife?
A. Yes, sir.
Q. How long have you known Henry Lee?
A. Well, my intimate acquaintance with him hasn't been very long. I have known him since the first of the year. He was employed by us.
Q. How long did he work for you?
A. About 2 months, as well as I can recollect now.
Q. Did his wife work for you?
A. Only as an assistant, I think.
Q. Since they went to work for you, do you think you have learned, and now know, their general character; that is, the general estimate in which they are held by the people who know them best?
A. I think I do.
Q. Now, taking up Henry Lee, is his character good or bad?
156 A. Very bad.
Q. From that general character, would you give him full faith and credit on his oath?
A. No, sir.
Q. Now, taking up Addie Lee, his wife; is her character good or bad?
A. As to her I could not say, because I have not been much with her. I only knew her when she came in the store about him.
Q. You only knew her to speak to?
A. Yes, sir; she came in to make a final settlement, though.

Cross-examination, questions by J. R. PENLAND:

Q. How long did he work for you, Mr. Close?
A. About 2 months.
Q. Two months?
A. Yes, sir.
Q. You had some little difficulty in settling up your account with him?
A. No difficulty that I know of.
Q. You had some difference?
A. Well, not a special difference; only he came around there drunk, and did a little unnecessary talking.
Q. And because of that, why you discharged him?
A. No, sir; I discharged him before that. I discharged him because he was not making straight sales; his sales were crooked.
Q. And it was because of this trouble, now, that you judge he is a man of bad character?

157 A. No, sir; it is not.

Q. Well, it is because of the facts that grew out of it?

A. Which trouble are you referring to?

Q. Your business relations with him.

A. Yes, yes.

Q. That is the ground on which you say you would not believe him on oath?

A. Yes, sir; that is it.

Q. And it is because of these personal relations with him, and that alone, that you come to that conclusion?

A. It is not a personal deal; it is a business relation.

Q. That's better; it was personal to you in your business?

A. It was a matter of business with me; yes, sir.

Q. You never knew him up to that time, did you?

A. Only as I saw him on the street.

Q. Never had any business with him?

A. Never.

Q. Never had any discussions with him, or had his character discussed, before that?

A. No, sir.

Q. Never heard it called into question; never heard it spoken of one way or the other; and you have never heard it spoken of since that matter, after your little flurry with him, until now?

A. Yes, after that I talked to—it was either Ramsey or somebody—I don't recollect who it was. I recollect only discussing the matter.

Q. How did they speak of him?

A. As being a crooked fellow.

Q. I didn't ask you what he said; I am not asking you for
158 information; but he spoke of it, that's all?

A. Yes.

Q. Is that the only time, now?

A. That is the only time I can recall.

Q. So you have heard one man speak of him, and then your own transaction?

A. I might have heard others; I haven't taken special notice.

Q. You form your opinion particularly from your own transactions?

A. And from my information of the records he made in the office, and the class of sales he made.

Redirect examination:

Q. I will ask you to state whether or not, from that, and the other things you have heard, you believe you know the estimate and his general standing in the community in which he lives?

A. I think I do, as represented by the people coming into the office and making the complaints, and showing that the transactions were not as he represented them.

On motion of Mr. Lynch the further taking of testimony was adjourned at this point, to be resumed at 2.30 o'clock p. m. this date.

The taking of testimony was resumed pursuant to adjournment at 2.30 o'clock p. m.

159 J. H. JEUNOT, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Mr. Jeunot, what is your business?

A. Motorman.

Q. On the street cars?

A. On the street car; it was the rapid transit at that time.

Q. How long have you been a motorman on the street cars here in Chattanooga?

A. I guess about 6 years and 6 or 7 months.

Q. Do you remember the circumstances of the lynching of Ed. Johnson?

A. Yes, sir.

Q. I will ask you to state whether or not your car ran over the line that passed right by the lynching?

A. Yes, sir; I met the mob at 4th and Walnut. The mob was going out to the bridge then, at the corner of 4th and Walnut, and I stopped there for another car, leaving the city at 10.30. I was to go into town at 10.44; but I didn't get in until 10.55. I was delayed——

Q. Did you go back out again after coming in?

A. We left town about 11 o'clock. We laid over about 5 or 6 minutes; and as we went by the jail we picked up 8 or 9 men at the jail. There was Mat Galloway and Charlie Baker, and we taken them out to the bridge, where the lynching was.

Q. They were deputy sheriffs, were they?

160 A. Yes.

Q. Were they armed?

A. Mat Galloway, I think, had a Winchester rifle under his coat.

Q. Going out to the scene of action?

A. They were going out to the scene. They thought they would get out there before the lynching happened, but it was just over by the time we got there.

Q. And it was all over when you got there?

A. It was all over when we got there.

Q. Now, how far is it from the jail where Mr. Galloway and Mr. Baker got on to the place where the lynching occurred, how many blocks?

A. Well, straight through, I guess it is about 6 blocks; but where we go around from Walnut to Lookout, on 6th, we make an additional block; and from Lookout to Walnut, on 4th, we make another additional block; and then, from the end of the bridge to the span where the lynching occurred is another block, about.

Q. So, from there straight over the hill to the bridge, is 6 blocks?

A. Yes, sir; that is the quickest way.

Q. How often did you make trips?

A. How often?

Q. Yes; how often on your line did you pass a given point, every 15 or 20 minutes?

A. We make the round trip from River View—we leave every hour; but this was the last trip we made from Hill City. I was in here at 10.45 and left at 11. But we were late. They cut our
161 trolley rope, and we fixed it and got in about, I guess, 10.43, or '55, or somewhere along there. We didn't have but 5 or 6 minutes to lay over and pulled out promptly at 11.

Q. Well, you went into Hill City, you mean, at 11?

A. We left the end of the line, at 9th and Broad, at 11 o'clock, and it takes us an average of about 5 minutes to go from 9th and Broad to 4th and Lookout street, or, 4th and Walnut.

Q. Where did you say that Galloway and these other parties got on that were going over to the bridge?

A. They stopped us right in front of the jail, and they got on the car right in front of the jail, and we carried them on out to the span where the lynching occurred and let them off.

Q. Why were they going out there at that time?

A. It seemed they had heard of the mob getting the prisoner out and were making out there to see if they could get out there in time, and they asked me to make good speed to get out there.

Q. How long had the darkey been lynched when you got out there?

A. That I couldn't tell.

Q. Had the crowd dispersed?

A. Well, there was some. They had scattered. I suppose they had come back to town. Some of them went down 1st street, I suppose, and the others one way, and the others another and another.

Q. Were there just a few people, some scattered ones, around there when you got there?

A. Well, there was some scattered ones, and some few on the bridge.

162 Q. You didn't know how long it had been since the negro was lynched?

A. Well, I guess it was 5 or 10 minutes.

Q. Well, don't tell what you suppose, if you don't know.

A. No, sir; I don't know.

Q. You were not out there when it was done?

A. No, sir; I was trying to get there. I left promptly at 11.

Q. You were trying to get there?

A. Yes, sir; after the officers got on, we went a little fast. We thought maybe they could make it in time.

Q. And this was 11 o'clock, if I understand it?

A. I suppose by the time we got to the jail it might have been about 3 minutes after 11.

Q. That was the first you saw of Galloway that night?

A. Yes, sir; that was the first I saw of it.

Q. And you put him off at the bridge?

A. I set him off right at the place where the lynching occurred.
Q. That was the only time you saw him that night?
A. Yes, sir.
Q. You don't know where he had been before that time?
A. No, sir; I didn't know that.
Q. And you hadn't been up here about the jail yourself, where the crowd was; you were on the car all the time, weren't you?
A. I was on the car; yes, sir.

163 J. L. ELLIOTT, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. Mr. Elliott, do you remember the night of the lynching of Ed. Johnson?
A. Yes, sir.
Q. Where were you, Mr. Elliott, that night?
A. I was at the Eagles' Club.
Q. How late did you stay at the Eagles' Club that night?
A. I was there until after the news came that there was a lynching at the bridge—the county bridge.
Q. I will ask you to state whether or not you saw Mr. Mat Galloway that night there?
A. Yes, sir; he was there.
Q. When did Mr. Galloway leave?
A. After the news came that there was a lynching.
Q. How long had he been there when the news came that there had been a lynching?
A. Why, he went up there about 8 o'clock. I think we went up there together, if I am not mistaken.
Q. What were you doing there?
A. We were engaging in a little social game of cards.
Q. I will ask you to state whether or not Mr. Galloway was engaging in the same game with you?
A. I think he was; yes, sir.
Q. Mr. Elliott, what business are you engaged in in this city?
164 A. Livery business.
Q. At what point?
A. #25 Carter street.

Cross-examination, questions by J. R. PENLAND:

Q. How long have you known Mat Galloway?
A. Why, I suppose about 5 or 6 years—something like that; probably longer; I don't know exactly.
Q. Have you been engaged in the saloon business during that time, 5 or 6 years?
A. Yes, sir; up until——
Q. Where did you get with Mat Galloway at?
A. I met him in Jack Price's saloon, near the corner of 9th and Market.

Q. In Jack Price's saloon, near the corner of 9th and Market?
A. Yes, sir.
Q. How long did you stay there?
A. Why, I don't remember; just a few minutes, I think.
Q. Which got to the saloon first, you or Galloway?
A. Why, I think I was in there first, if I am not mistaken.
Q. Are you certain of that?
A. Pretty certain; yes, sir.
Q. What did you go up there for?
A. Up where—to the saloon?
Q. Yes.
A. Well, I wasn't there for any particular purpose. That's a kind of a hang-out, there at the corner.
Q. You were running a saloon yourself, weren't you?
A. Not at that time.
165 Q. You were not?
A. No, sir.
Q. How long since you went out of the saloon business?
A. Last February.
Q. Last February?
A. Yes, sir.
Q. Well, how long had you been engaged in that business before that, continuously?
A. Well, off and on for 12 years, I guess.
Q. Twelve years?
A. Yes, sir.
Q. Well, were you not operating a saloon at the time of this lynching?
A. No, sir; I wasn't working in a saloon at all at that time. I had been at work for Stanley & Bogenshott, but I quit, and wasn't working anywhere at that time.
Q. You didn't have any business at all at that time?
A. No, sir.
Q. Well, how long after you got to the saloon until Galloway came?
A. Well, I couldn't say; I don't know how long I had been in there; not very long, I don't suppose.
Q. Talking to other parties, were you?
A. Why, I don't remember whether I was or not—the bartender, I suppose.
Q. Do you remember anybody else in there at all?
A. No one only the bartender; I couldn't say.
Q. Which one of the bartenders was it that was there?
A. Mr. Viox.
Q. Mr. Viox?
166 A. Yes, sir.
Q. Are you certain he was there?
A. Yes, sir.
Q. Now, was there anybody else?

A. Well, there was several; but I couldn't say who.
Q. You couldn't give the names of anybody else?
A. No, sir.
Q. How comes it, now, that you can mention and remember Galloway and not remember any of the rest of that crowd there?
A. Well, I was standing at the bar, and Mat came in, where we had a glass of beer, I suppose; and I suggested that we go up to the Eagles and play a game of cards, which we usually done every evening.
Q. Did you play with anybody else besides Mat?
A. Yes, sir; Mr. Baker was there this night.
Q. He was up at the Eagles? I was talking about the saloon.
A. No; I don't remember anybody else there.
Q. So you don't remember anybody else in that crowd up there but Mat Galloway?
A. At the saloon?
Q. At the saloon.
A. That is to say, to call the names I don't.
Q. Are you a member of the Eagles' organization?
A. Yes, sir.
Q. Is Galloway?
A. Yes, sir; he was at that time, I suppose he is yet. I see him up there very often.
Q. A member in good standing?
A. Yes, sir.
167 Q. Who else was up there that night, do you remember, playing cards? Was anybody else engaged in the game?
A. Mr. Frawley and Mr. Baker and I were all playing a game at this table.
Q. Fred Frawley?
A. Yes, sir; and several other parties were in the room, but I couldn't say who they were.
Q. What time was it when you broke up there?
A. After this news came there. I don't know how it come; but some one said there was a lynching, and that broke up the game. They broke and run.
Q. Well, you don't know the hour?
A. Well, no, sir; it was something near 10 or 10.30; something like that, I suppose.
Q. Well, you do not know the time?
A. No, sir; not to the minute.
Q. You are simply guessing at that?
A. It was after the saloons had closed. I think there were 1 or 2 bartenders up there—just got up there, maybe. Right at 10 o'clock, or a little after.
Q. You don't know whether they referred to the fact that the lynching had occurred at the bridge, or whether they referred to the jail, when they came in, do you?

A. Well, I don't know how they put it. They said there was a lynching on the bridge.

Q. They said the lynching was on the bridge, and didn't say it was at the jail?

A. Well, they might have said it; I won't be sure.

Q. You said "there was a lynching on the bridge?"

A. Yes, sir; "on the bridge," that's the way the news come,
168 as far as I remember.

Q. They didn't say "a lynching at the jail?"

A. No, they didn't say "a lynching at the jail."

Q. But "a lynching at the bridge?"

A. To the best I remember, that's the way I got the news.

Q. Were you living in Chattanooga when they took the evidence in this case before?

A. Yes, sir.

Q. Were you examined as a witness then?

A. Well, I was up here one time, and I don't know why, Mr. Galloway thought he might want me for a witness; but I was up here one morning, and he never called on me. And he said he would call on me if I was needed; and I wasn't called after that.

Q. You were not summoned?

A. No, sir.

Q. He just told you to come up?

A. He told me he would let me know if he needed me as a witness.

Q. And he told you to come up to-day?

A. Yes, sir; he telephoned me, and I come up.

Q. You haven't been summoned by an officer?

A. No, sir.

Q. So you were here when the testimony was taken before, and were not summoned at that time?

A. Yes, sir.

169 Mr. LYNCH. We have a record we want to produce, with reference to the conviction of this man Henry Lee. We will bring the record over and let you examine it; and it is agreed that we can certify it, have a certified copy of it made, and introduced in the record.

Mr. PENLAND. That will be all right.

N. A. SMITH, a witness for the defendants, was duly sworn, and testified as follows:

Direct examination, questions by J. J. LYNCH:

Q. 'Squire Smith, where do you live?

A. East Chattanooga.

Q. Sherman Heights?

A. Yes, sir.

Q. I will ask you if you know John E. Taylor?

A. Yes, sir.

Q. 'Squire, did you know John Taylor at the time Ed. Johnson was lynched?

A. Yes, sir.

Q. Do you remember where you were that night, the night of the lynching?

A. I was in the Odd Fellows' lodge, at East Chattanooga, Sherman Heights.

Q. About what time did your lodge adjourn?

170 A. Well, I don't remember just exactly, that evening; but I suppose about 9.30 or ten; maybe 11 o'clock; I don't know. We hardly ever got out sooner than 9.30; sometimes it would be 11; it was owing to what we had to do.

Q. The average time was about 10 o'clock?

A. Yes, sir.

Q. I will ask you if you were an officer at the time?

A. I was recording secretary at the time.

Q. You made and kept no list of the members present, did you?

A. Nothing but the officers.

Q. Mr. Taylor wasn't an officer, was he?

A. No, sir.

Q. Mr. John E. Taylor?

A. No, sir.

Q. I will ask you if he was a member of that lodge?

A. Yes, sir.

Q. I will ask you to state whether or not he was present at that time?

A. He was, to the best of my recollection.

Q. He was?

A. Yes, sir.

Q. I will ask you to state whether or not at that time, 'Squire, he was a candidate for justice of the peace.

A. I believe so; yes, sir.

Q. And I will ask you to state whether or not you were a candidate against him.

A. Yes, sir.

Q. And you defeated him?

A. Yes, sir.

171 Q. He was a Democrat and you were Republican?

A. Yes, sir.

Q. And you defeated him for justice of the peace?

A. Yes, sir.

Q. Do you remember whether or not he had been sick previous to that time, for some little time?

A. I don't know whether it was just at that period or not, but he was sick. I know I went to see him when he was sick. And just after he got well he came up to the lodge. I think it was that same time. I know he was reported to the lodge for 2 or 3 weeks sick, and I think it was just about this time or before this time.

Q. I will ask you to state whether or not, a day or two after the lynching, John E. Taylor called your attention, or stated to you, that he was glad he was at the lodge that night?

A. Yes, sir.

Mr. PENLAND. I want to note an objection to that conversation between these two parties, neither of which are defendants.

The COMMISSIONER. Note the objection.

Q. What did he say?

A. John said to me—I don't remember whether it was the next day or not, or a day or so afterwards—"I'm glad I was at the lodge Monday night." I remember that very well.

172 Cross-examination, questions by J. R. PENLAND:

Q. Do you know why he made that remark to you?

A. No, sir; I do not, except I suppose he was glad that he wasn't there.

Q. Did he say anybody was accusing him of it?

A. I believe he did say at the time. He said, "I'm glad I was at the lodge, or they'd be liable to accuse me of being in that mob."

Q. "Liable to accuse me of being in that mob?"

A. Yes, sir.

Q. Now, Mr. Smith, you say that you usually adjourned your lodge meetings anywhere from 9 to 11 o'clock?

A. No, I said 9.30.

Q. 9.30?

A. We might sometimes get out at 9, but hardly ever.

Q. You have no personal recollection at all of what time you adjourned that night?

A. No, sir; not at all.

Q. You could not possibly state the time?

A. Oh, I am confident it wasn't later than 9.30.

Q. Neither have you any personal recollection——

Question by J. J. LYNCH:

Q. Do you mean "earlier than" or "later than?"

A. Earlier, is what I meant.

Questions by J. R. PENLAND:

Q. You haven't any personal recollection, either, of the presence of the man John Taylor?

A. I wouldn't state positively that he was there, no; but to
173 the best of my knowledge he was. It was that same evening that there wasn't but very few members; and I know he had, as well as I remember, he had something around his neck. I wouldn't say positively, now, but I think it was that very evening.

Q. It might have been at another time and you might be mistaken?

A. Yes, I might be mistaken, but I am pretty confident that he was there.

Q. You know he had been sick before that?

A. Yes, sir.

Q. Or along about that time?

A. Yes, sir; I had been up to see him. He lived in about 2 or 3 blocks of me there.

Redirect examination, questions by J. J. LYNCH:

Q. I will ask you if, at that time, 'Squire Bragg lived in your district and was a candidate for justice of the peace, also?

A. Yes, sir.

Q. I will ask you if they didn't get out the report that his boys were in that lynching, and if that report didn't beat 'Squire Bragg for nomination.

A. 'Squire Bragg told me so.

Mr. PENLAND. We want to note an objection to that.

The COMMISSIONER. The stenographer will note the exception.

174 Q. And wasn't that why they were afraid to have that report out against them?

A. I wouldn't have wanted it against me.

Q. A report of that sort would hurt a man in his race?

A. Yes.

Q. And one of the candidates claimed it did hurt him in his race?

A. Yes.

Q. 'Squire Bragg was a candidate for nomination in that election, also?

A. Yes, sir.

Mr. PENLAND. I want the stenographer to note an exception to that also.

The COMMISSIONER. The stenographer will note the objection.

Q. 'Squire, can you give us the name of some other members of that lodge who were there that night?

A. Why, my brother was there, L. A. Smith.

Q. Can you give us the names of some others?

A. A. B. Cobal was there, I think.

Q. Wasn't Francis Heaton?

A. Francis Heaton was there. H. L. Henderson.

Q. All of these men live in the county, don't they?

A. I don't know whether John Tinker was there or not; probably Ed. Tinker.

Q. We wanted to give the Government the benefit of some of those names, so if they wanted to investigate this man they may.

175 Mr. LYNCH. We are waiting for some records. I had those names brought out so the representative of the Government can, if he desires, investigate this alibi proved by this witness, and, while he is not a defendant, at the same time his name has been coupled with——

Mr. PENLAND. I just want to notify Mr. Lynch that we are not trying to do anything with this man Taylor; and we are not going to the trouble of hunting up witnesses to convict a man when we haven't even got him charged with anything.

Mr. LYNCH. In view of that statement from the attorney-general, we don't think it is proper to take the time of the Government's officials with any more testimony, or delaying this case in order to get more witnesses. But we want to bring that record in, and we will have it here in a few minutes.

Mr. PENLAND. We want to look over it before it is introduced.

At this point, 3 o'clock p. m., the further taking of testimony in this case was adjourned, to be resumed at 5 o'clock p. m. this date.

The further taking of testimony was resumed, pursuant to adjournment, at 5 o'clock p. m. this date, and after both sides announced that they had no further testimony to offer the taking was adjourned.

176

Stipulation.

It is hereby agreed by counsel both for plaintiff and the defendants that the testimony taken in the case of The U. S. v. J. F. Shipp et al., at the federal court building, Chattanooga, Tenn., on July 1 and 2, 1908, before James D. Maher, commissioner, which has been taken in shorthand by Boyd Thompson, shall be typewritten by him, and a copy furnished to counsel for the plaintiff and also the counsel for defendants; and, if the testimony as thus taken shall be agreed to as being correctly transcribed, it may be signed for the witnesses by said stenographer, the personal signatures of the witnesses being hereby waived in that event. But if it should be suggested by counsel for the plaintiff or defendants that there are errors in said testimony as taken down or transcribed, then it shall be examined and settled by counsel, if they can agree; and, if they cannot agree, then it shall be submitted to the commissioner, James D. Maher, who shall settle the differences as to what the testimony is.

JAMES R. PENLAND,
For the U. S.
CLIFT I. COOKE,
ROBT. PRITCHARD,
J. J. LYNCH,
For the Defendants.

177 And afterwards, to wit, on the 14th day of October, A. D. 1908, the following entry appears of record, viz:

178 THE UNITED STATES OF AMERICA, Complainant, vs. J. F. SHIPP ET AL., } No. 5, Original.

It is now here ordered by the court that Mr. James D. Maher, the commissioner appointed by order of this court, entered herein on May 18th, 1908, to take and return additional testimony in this

cause, be, and he is hereby, allowed the sum of $200.00 in full for his compensation and expenses, and that said sum be paid by the complainant herein.

October 14th, 1908.

179 And afterwards, to wit, on the 25th day of November, A. D. 1908, a stipulation as to printing testimony and record was filed in the words and figures following, viz:

180 In the Supreme Court of the United States.

THE UNITED STATES
vs.
J. F. SHIPP ET AL. } No. 5, Original.

Stipulation.

In this case the following agreement is entered into between the plaintiff, the United States, represented by James R. Penland, United States attorney for the eastern district of Tennessee, and the attorneys whose names are hereto subscribed representing certain defendants in the case, to wit:

First. That it is the expressed purpose of the Attorney-General of the United States before or at the time this case is called for trial to enter a motion dismissing the case as to the following defendants, to wit: (1) Paul Pool, (2) Thomas B. Taylor, (3) Wm. Beeler, (4) John Jones, (5) Marion Perkins, (6) C. A. Baker, (7) Claude Powell, (8) Charles J. Powell, (9) A. J. Cartwright, (10) R. T. Cartwright, (11) John Varnell, (12) Joe Clark, (13) Fred Frauley, (14) Alf Hammond, (15) Wm. Markette, (16) Geo. W. Brown, and (17) Frank Jones, and (18) Sheenie Warner.

Second. By reason of the fact that it is hereby agreed that a motion will be made by the Attorney-General to dismiss the prosecution against the above-named defendants, it is further agreed that certain parts of the proof referring exclusively to the defendants to be included in said motion for dismissal, need not be printed for use on the trial of the case, and that only the following designated parts of the testimony and record shall be printed, to wit:

Print all of vol. 1.

Print all of vol. 2.

Print all of vol. 3, except the testimony of W. C. Flournoy, beginning on page 246 and ending on page 259 of said vol. 3.

Print all of vol. 4.

Print all of vol. 5.

Print all of vol. 6.

Print all of vol. 7.

181 Print all of vol. 8 except the testimony of Mrs. Kelly Orear, beginning on page 623 and ending on page 627; Richard E. Pooler, beginning on page 628 and ending on page 632; John J.

Kean, beginning on page 632 and ending on page 638; Addie Handman, beginning on page 639 and ending on page 642; Alf Handman, beginning on page 643 and ending on page 652; L. W. Bates, page 666; and Joseph Tramby, beginning on page 666 and ending on page 667; all of said omitted testimony having been introduced in behalf of defendant Alf Handman.

Print all of vol. 9, beginning with W. B. Cox on page 669, down to and including the testimony of J. B. Justus, on page 766. The rest of this vol. omit, as it all applies to the defendant Wm. Markette. Omit vol. 10 altogether, except deposition of Dr. Cooper Holtzclaw, pages 809 to 815, inclusive, as it applies to William Markette and Sheenie Warner only, both to be included in motion to dismiss.

Print all of vol. 11.

Print all of vol. 12 except the testimony of T. A. Boone, beginning on page 1206 and ending on page 1214; Frank M. Jones, beginning on page 1214 and ending on page 1250; Azariah Shelton, beginning on page 1250 and ending on page 1256; J. P. Webb, beginning on page 1256 and ending on page 1257; E. D. Bass, page 1258; Wm. Shelton, page 1259; H. D. Huffaker, page 1260, all of which omitted testimony was introduced in behalf of the defendant Frank Jones.

Of vol. 13 print only the testimony of Robert E. Prichard, beginning on page 1281 and ending on page 1290, and Oscar Yarnell, pages 360 to 376, inclusive. The rest of this vol. is omitted because it refers altogether to the defendants Frank Jones, John Jones, and Geo. W. Brown, who, it is understood, will be included in said motion for dismissal.

Vol. 14. Print testimony of the following witnesses only in this vol.: Dr. M. J. Lewis, beginning on page 1502 and ending on page 1513; J. C. McGee, beginning on page 1525 and ending on page 1530; O. G. Stone, beginning on page 1531 and ending on page 1542;
182 E. D. Harron, beginning on page 1556 and ending on page 1561; Charles Watson, beginning on page 1576 and ending on page 1584; J. J. Bork, beginning on page 1584 and ending on page 1589; R. A. Williams, beginning on page 1589 and ending on page 1598; George W. Edwards, beginning on page 1598 and ending on page 1600. The rest of this vol. omit, because it refers to defendants to be included in motion to dismiss.

Print all of vol. 15 except the testimony of G. M. Ashbrook, beginning on page 1608 and ending on page 1614; and A. J. Glenn, beginning on page 1791 and ending on page 1792, the evidence of the first two being in behalf of defendant Perkins and the last in behalf of defendant C. A. Baker.

Print all of vol. 16.

Print all of vol. 17.

Print all of vol. 18.

Print all of vol. 19 except the testimony of H. H. Sutton, beginning on page 2238 and ending on page 2245.

Print all of vol. 20.

Third. This stipulation shall in nowise affect the rights of the defendants against whom the prosecution is to proceed, nor waive any rights of the plaintiff, the said United States, to proceed against said remaining defendants.

Fourth. All agreements and stipulations entered into by attorneys during the taking of proof and made part of the record shall be printed and continued as part of the record, and nothing in this agreement shall authorize the omission of such agreements and stipulations from the printed record.

This 19 day of Nov., 1908.

The United States of America, by James R. Penland, U. S. atty. for Eastern Dist. Tenn.

Lewis Shepherd, M. A. Fleming, T. P. Shepherd, attorneys for certain defendants.

G. W. Chamlee, atty. for Luther Williams and associate atty. for Frank Ward.

John A. Hood, atty. for Frank Ward.

M. H. Clift, atty. for J. F. Shipp, sheriff, and deputies.

James J. Lynch, for defendants Shipp and deputies.

Robert Pritchard, for Shipp and deputies.

183 (Endorsed:) Supreme Court U. S. October term, 1908. No. 5, Original. The United States of America, compl't, vs. J. F. Shipp et al. Stipulation as to printing testimony and record. Filed Nov. 25th, 1908.

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FILE COPY.

Office Supreme Court U. S.
FILED
MAY 28 1906
JAMES H. McKENNEY,
Clerk.

No. 26 Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 5 Orig
O.T. 1907
12 Or
O.T. 1

THE UNITED STATES OF AMERICA, complainants,
v.
JOHN F. SHIPP AND OTHERS, defendants.

INFORMATION.

WILLIAM H. MOODY,
Attorney-General.

12 Orig'l.
O.T. 1906

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES OF AMERICA, complainants, *v.* JOHN F. SHIPP, FRANK JONES, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan, "Sheenie" Warner, Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice, John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell, and Alfred Hammond, defendants.	No.—. Original.

INFORMATION.

To the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now come the United States of America by William H. Moody, their Attorney-General, and in their behalf inform the court as follows:

1. That on the 11th day of February, 1906, one Ed Johnson, a citizen of the United States and a resident

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and citizen of the State of Tennessee, and a colored person of African descent, was convicted of the crime of rape in the criminal court of Hamilton County, held at the city of Chattanooga in the State of Tennessee, and said court thereupon sentenced the said Ed Johnson to suffer the penalty of death.

2. That thereafter, to wit, on the 3d day of March, 1906, and before the date set for the execution of the said Ed Johnson, a petition for a writ of habeas corpus, signed by the said Ed Johnson, as petitioner, was duly presented to the United States Circuit Court for the Northern Division of the Eastern District of Tennessee, in which it was alleged, among other things, that upon the trial of the said Ed Johnson in the criminal court of Hamilton County in the State of Tennessee for the crime of rape, for which he had been convicted, said petitioner had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution; that thereafter, to wit, on the 10th day of March, 1906, the application of the said Ed Johnson for a writ of habeas corpus came on for hearing before the said United States Court for the Eastern District of Tennessee upon the petition, return, answer, and replication, and upon the testimony of witnesses given orally in open court, and after argument of counsel, the said Circuit Court ordered that said petition be

dismissed, and that the writ of habeas corpus prayed for in said petition be denied. It was further ordered by the said Circuit Court of the United States that said petitioner be remanded to the custody of the sheriff of said Hamilton County in the said State of Tennessee, to be detained by said sheriff in his custody for the period of ten days in which to enable said petitioner to prosecute an appeal from said order, should he be so advised and should an appeal lie from said order, and in default of the prosecution of an appeal within said time to be then further proceeded with by the court of the State of Tennessee under its sentence; that thereafter, to wit, on the 17th day of March, 1906, an application was duly presented by the said Ed Johnson to the Hon. John M. Harlan, an associate justice of the Supreme Court of the United States, assigned to the Sixth Circuit, asking that an appeal be allowed to the Supreme Court of the United States from the judgment rendered in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee on March 10, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, as aforesaid, which said appeal was on the same day duly allowed by Mr. Justice Harlan; that thereafter, to wit, on the 19th day of March, 1906, a motion was duly made in the Supreme Court of the United States by Mr. E. M. Hewlett, counsel for and representing the said Ed Johnson, for an order allowing an appeal to the Supreme Court of the United States from the judgment of the Circuit Court of the

United States for the Northern Division of the Eastern District of Tennessee, rendered on the 10th day of March, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, which motion was thereupon granted by the Supreme Court of the United States and an order duly made and entered by the Chief Justice in the words and figures following, to wit:

Ed Johnson, Appellant, v. *The State of Tennessee.*

On motion of Mr. E. M. Hewlett, of counsel for the appellant, it is ordered by the court that an appeal from the Circuit Court of the United States for the Eastern District of Tennessee be, and the same is hereby, allowed, and that all proceedings against the appellant be stayed, and the custody of the said appellant be retained pending this appeal.

Per Mr. Chief Justice Fuller.

All of which more fully appears from the record in the case entitled "*Ed Johnson, Appellant,* v. *The State of Tennessee,*" on file in the office of the clerk of this court.

3. This honorable court is further informed of the following facts, which are alleged and stated by the Attorney-General solely upon information and belief:

That on the same day, to wit, the said 19th day of March, 1906, and after the making and entering of said order, as aforesaid, the clerk of the Supreme Court of the United States duly notified by telegraph John F. Shipp, the sheriff of said Hamilton County, in the State

of Tennessee, of the making and entering said order, as aforesaid, and of the contents thereof, to wit, that all proceedings against the said Ed Johnson were ordered stayed by the said Supreme Court and that the custody of the said Ed Johnson by the said John F. Shipp, as sheriff of said Hamilton County, should be retained by him, the said John F. Shipp, pending the determination of said appeal in the Supreme Court; that said telegram informing the said John F. Shipp of the action of this honorable court was received by said sheriff before 6 o'clock on the evening of the said 19th day of March, 1906; that in addition to the notification by telegraph of the action of this court in allowing said appeal and staying proceedings against the said Ed Johnson, as aforesaid, there was published and circulated in the said city of Chattanooga in the evening papers on the said 19th day of March, 1906, a full account of the action of the Supreme Court of the United States in allowing an appeal and granting a stay of further proceedings on the part of the State courts against the said Ed Johnson until the determination of said appeal before the Supreme Court of the United States.

4. That during all the times herein mentioned the above-named defendant, John F. Shipp, was the duly elected, qualified, and acting sheriff of Hamilton County, in the State of Tennessee, and as such sheriff had and exercised full charge and control of the county jail, located in the city of Chattanooga, in said county, and was the legal custodian under the laws of Tennessee

of all persons duly committed in said county under the laws of said State to confinement and imprisonment within said jail; that the above-named defendants, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, and each of them, were, during all the times herein mentioned, the duly appointed, qualified, and acting deputy sheriffs of said county and State; that said sheriff and said deputy sheriffs and each of them before the hour of 6 o'clock on the evening of the said 19th day of March, 1906, were fully advised and informed of the action taken by the Supreme Court of the United States with respect to the appeal of the said Ed Johnson, as hereinbefore set forth; that the said Ed Johnson was then and there a prisoner confined and restrained of his liberty in the said county jail and in the lawful custody and control of said sheriff and said deputy sheriffs under a commitment duly issued out of the criminal court of said Hamilton County and under and pursuant to the orders of the said United States Circuit Court for the Northern Division of the Eastern District of Tennessee and the Supreme Court of the United States made and entered, as aforesaid; that said sheriff and said deputy sheriffs on the said 19th day of March, 1906, after having been advised of the action of the Supreme Court of the United States, as aforesaid, were informed, and had every reason to believe, from current reports and rumors conveyed to them and each of them, that an attempt would be made on the evening of said day or

early in the morning of the following day by a mob composed of a large number of armed men to force an entrance into the said county jail for the purpose of taking therefrom by violence and unlawful means the said Ed Johnson and putting him to death; that notwithstanding said rumors and said reports which were conveyed to said sheriff and his said deputies, as aforesaid, the said sheriff withdrew from said jail early in the evening of said day the usual and customary guard and left in charge thereof only the night jailer, to wit, Deputy Sheriff Jeremiah Gibson, and committed other acts and did other things, evincing a purpose and disposition on the part of said sheriff to render it less difficult and less dangerous for said mob to prosecute and carry into effect its unlawful design and purpose, to wit, the lynching of the said Ed Johnson, designed and planned as aforesaid.

5. That thereafter, to wit, at about the hour of 9 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga in the said county and State, the above-named defendants, John F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan (whose true first name is to complainants unknown), "Sheenie" Warner (whose true first name is to complainants unknown), Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice (whose true first name is to complainants unknown), John Jones, A. J. Cartwright, R. F. Cartwright, Henry Padgett, William

May, Frank Ward, John Varnell, and Alfred Hammond, and each of them, and a large number of other persons whose names are to complainants unknown, did then and there willfully, unlawfully, and wrongfully combine, conspire, confederate, and agree together to break and enter the said county jail of Hamilton County for the purpose of taking therefrom the person of the said Ed Johnson to lynch and murder him, the said Ed Johnson, with the intent then and there had and entertained by the said defendants, and each of them, to show their contempt and disregard for the order of this honorable court made, entered, issued, and published, as aforesaid, and for the purpose of preventing this honorable court from hearing the appeal of the said Ed Johnson, allowed by this court, as aforesaid, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States; that in the prosecution and furtherance of said unlawful conspiracy, made and entered into as aforesaid, and in order to show their contempt and disregard for the said order of this honorable court, and in order to prevent this court from hearing said appeal, said defendants and each of them did then and there do the things and commit the acts more particularly described, as follows, to wit:

That between the hours of 9 and 12 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga, in the county and State aforesaid, a large number of persons, including the above-named defendants, with the exception of the said John F. Shipp, the

sheriff of said county, and the said Jeremiah Gibson, deputy sheriff of said county, assembled in the vicinity of said county jail, and thereupon said mob unlawfully and wrongfully entered said jail and with force and arms broke open the cell in which the said Ed Johnson was then and there confined as a prisoner, and with force and violence and against the will of him, the said Ed Johnson, took him, the said Ed Johnson, from said jail to a point a short distance therefrom and hanged him, the said Ed Johnson, by the neck until he was dead; that at the time said mob entered said jail, as aforesaid, the only person in charge thereof was the said deputy sheriff, Jeremiah Gibson; that while the mob was in possession of said jail the said sheriff, John F. Shipp, arrived at said jail, but made no effort to prevent said mob or any of the members thereof from taking the said Ed Johnson from said jail; that the said John F. Shipp and the said Jeremiah Gibson were in truth and in fact in sympathy with said mob and, while pretending to perform their duty as officials of said county and State in affording protection to the said Ed Johnson, who was then and there in their lawful custody and control, the said John F. Shipp and the said Jeremiah Gibson and each of them did in truth and in fact aid and abet said mob and the members thereof in the prosecution and performance of their unlawful act in lynching and murdering the said Ed Johnson, as aforesaid; that during all this time the above-named defendants and each of them, and the said John F. Shipp and the said Jeremiah Gibson and each of them then and there well knew

that the Supreme Court of the United States had made, entered, issued, and published the order in the manner hereinbefore set forth; that all of said acts were then and there committed by said defendants and each of them, and the other members of said mob whose names are to complainants unknown, with the intent then and there had and entertained by them and by each of them to show their contempt and utter disregard for the order of this honorable court made and entered, as aforesaid, and in order to prevent this honorable court from hearing the appeal of the said Ed Johnson, which appeal had been perfected and allowed, as aforesaid.

6. Wherefore, the United States of America, the complainants herein, through their Attorney-General, respectfully request this honorable court that in consideration of the acts committed by the above-named defendants and each of them, as hereinbefore set forth, it will issue and direct the marshal of this court to serve upon said defendants and each of them a rule to show cause, if any there be, on a day certain why said defendants and each of them should not be punished as and for a contempt of this honorable court.

William H. Moody

The Attorney-General of the United States.

WASHINGTON, D. C., *May 25, 1906.*

UNITED STATES OF AMERICA,

District of Columbia, ss:

William H. Moody, being first duly sworn, deposes and says that he is the Attorney-General of the United States, and that he has read the foregoing information, and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

Subscribed and sworn to before me this 25th day of May, 1906.

A. C. Caine, SEAL

Notary Public, District of Columbia.

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Office Supreme Court, U. S.
FILED.
NOV 12 1906
JAMES H. McKENNEY,
CLERK

No. 5 Orig.
O. T. 1907

~~No. 13, Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA, COMPLAINANTS,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

MOTION TO SET DOWN FOR HEARING ON PRELIMINARY QUESTIONS OF LAW, WITHOUT PREJUDICE, ETC.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, Complainants,
v.
JOHN F. SHIPP AND OTHERS, Defendants.
} No. 12, Original.

MOTION TO SET DOWN FOR HEARING ON PRELIMINARY QUESTIONS OF LAW, WITHOUT PREJUDICE, ETC.

The Attorney-General calls up this information in contempt and shows the court that the answers of all the defendants are now on file, excepting the answer of Paul Pool, who has not been located and was not served with process and seems to be a fugitive.

The answers in general set up an alibi or deny connection with the mob or knowledge of its formation, and plead not guilty. Certain of the answers also rely upon the contention that this court had no jurisdiction of the Johnson case. The answer of Shipp and his deputies prays that the information be dismissed as against them, because the Circuit Court of the United States had no right or authority to entertain Johnson's petition for

habeas corpus, and that consequently the order of the Circuit Court dismissing the petition was not appealable to this court.

These averments and contentions raise the question of the jurisdiction to entertain Johnson's case in the Circuit Court and in this court, and consequently the question of the jurisdiction of this court in this proceeding and other related preliminary questions of law.

The Attorney-General therefore respectfully suggests that the court set the case down for hearing under the information and answers upon these preliminary questions of law, and further suggests that the court shall, if it sees fit, define the nature and scope of these questions for discussion in the briefs and at the oral argument. Further, the Attorney-General expressly states that this application to set the case down for hearing is made without prejudice to the right of the Government to proceed thereafter as it may be entitled to do and as it may be advised, upon the merits of the case, by taking testimony under the claims of alibi and the pleas of not guilty, thereafter presenting the case for final hearing and determination upon the issues of fact thus made.

The Attorney-General also suggests that the preliminary hearing on the questions of law, for which application is now made, be set for December 3 next at the head of the call for that day, and that in any order which the court may now see fit

to make in the premises it will frame the order so as to operate without prejudice to the ulterior progress of the case on the merits.

WILLIAM H. MOODY,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

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No. 5 Orig.
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~~No. 10, Original.~~

In the Supreme Court of the United States.

~~OCTOBER TERM, 1907.~~

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

BRIEF FOR THE UNITED STATES ON PRELIMINARY QUESTIONS OF LAW.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, complainant, *v.* JOHN F. SHIPP AND OTHERS, defendants.	No. 12, Original.

BRIEF FOR THE UNITED STATES ON PRELIMINARY QUESTIONS OF LAW.

STATEMENT.

The court is of necessity well apprized of this original proceeding in contempt to punish a disobedience of its own command. For the purposes of the present hearing, the facts and pleadings may be stated briefly and informally.

The information sets forth the conviction at Chattanooga, Tenn., in the State court on February 11, 1906, of the negro Johnson, and his sentence to death; his subsequent petition for habeas corpus to the United States Circuit Court, which was heard upon the pleadings and testimony taken, and denied; the remand of him to the sheriff of Hamilton County, Tenn., to be detained for ten

days from March 10, 1906, in order to enable him to prosecute an appeal from the order of the Circuit Court if he was so entitled and advised, and thereafter, in default of the prosecution of an appeal within that time, to be further dealt with by the State Court under its sentence; the application to Mr. Justice Harlan on March 15, praying for the allowance of an appeal to this court, which was allowed on March 17, and on March 19, on motion in open court by counsel for Johnson, was formally allowed by the court in banc in an order which directed on its face "that all proceedings be stayed and the custody of the said appellant be retained during this appeal." (See also record in case of *Ed Johnson, appellant*, v. *The State of Tennessee*, now on file and printed, pp. 1, 50, 51.)

The information also sets forth these further facts upon information and belief: That on the date of the order of this court, namely, on March 19, the clerk of the court notified John F. Shipp, sheriff of Hamilton County, by telegraph, of the entry of the order and its contents, and, specifically, that all proceedings against Johnson were stayed, and that custody of him should be retained by the sheriff pending the appeal; that this telegraphic notice was received by the sheriff before 6 o'clock p. m. on the same day, and that the Chattanooga evening papers of that day published and circulated a full account of the allowance of the appeal and the stay of all further proceedings; that Shipp, as sheriff, and his deputies, all being

so advised of the order and being in full charge and control of the county jail in Chattanooga wherein Johnson was confined under the custody of the sheriff, were informed, and had reason to believe, from reports and rumors conveyed to them, that an attempt would be made that evening by a mob of armed men to force the jail and to take Johnson out and to put him to death by violence, and that, notwithstanding these reports and rumors, the sheriff withdrew the usual guard from the jail, leaving in charge only the night jailor, his deputy, Gibson, and thus and in other ways the sheriff and his deputies evinced a purpose to render it less difficult and dangerous for the mob to carry into effect its unlawful design and purpose of lynching Johnson. The information then proceeds to charge the sheriff and his deputies and the other defendants, naming them all, with a wilful conspiracy to lynch Johnson, and with the intent to show their contempt and disregard for the order of this court, and to prevent the hearing of Johnson's appeal as allowed, and to prevent his exercising and enjoying a right secured to him by the Constitution and laws of the United States, and that in furtherance of this conspiracy the defendants did do, or aid and abet in doing, the acts by and thru which a mob assembled in Chattanooga on the evening of March 19, 1906, between 9 o'clock and midnight, entered the jail with force and arms, broke open the cell in which Johnson was confined, and violently took him from the jail

and to a point a short distance away, and there hanged him by the neck until he was dead.

A rule to show cause was issued upon the information; the answers to the rule plead not guilty in terms or in effect and deny connection or participation with the mob or with any conspiracy as charged; some of the answers claim an alibi; some of them raise questions of jurisdiction, and in particular and as typical of such preliminary defenses in matter of law, the answer of the sheriff and his deputies sets up—

That the charges, even if true, constitute contempt of the judicial authority of Tennessee only, and not of this court, because Johnson's petition in the Circuit Court did not allege a lack of jurisdiction in the State court to try, convict, and sentence him; because his petition does not allege denial of rights secured by the Constitution of the United States under color of any law or authority of the State, but charges that the denials of right were due to the individual action of officials and other citizens of the State in violation of their duty to the State; because the writ of habeas corpus can not be invoked in a court of the United States to review errors in proceedings in a State court, which are cognizable only by the highest court of the State on writ of error. The answer traverses the petitioner's allegations of denial of rights in the State court, and it is contended that the application for habeas corpus to the Circuit Court was not made in good faith; that the Circuit Court had

no jurisdiction, and that this court had no jurisdiction on appeal.

The issues of fact as to guilt and alibi raised by the answers having been postponed, this hearing deals solely with the preliminary questions of law thus raised.

Of course the question of Johnson's guilt or innocence of the crime charged against him in no way arises on this record; nor is it necessary to discuss the various claims of denial of rights which his petition alleged and which are declared to be false and unfounded. These would be proper matters for consideration and determination on the record in *Johnson* v. *Tennessee* if that case were now a live proceeding in this court.

Johnson alleged, in short, that he had not had a fair trial at the hands of the State, and that his rights as a citizen of the United States under the Constitution had thus been infringed. This was denied, but his petition on its face was sufficient to lead the Circuit Court to entertain his application, and that is enough to superimpose a new and distinct constitutional right, namely, the right of appeal to this court, which is a very important right to be maintained in all cases.

Johnson's complaints were that he was denied the assistance of counsel; that the grand jury and the trial jury were illegally constituted; that he was denied a change of venue and a continuance; that he was compelled to testify against himself under circumstances which revealed a prejudiced

juror; that he was denied the right to apply for a new trial or to present a bill of exceptions or to appeal to the Supreme Court of Tennessee. (Rec., pp. 1–6.) These allegations were denied by the answer of the State (Rec., pp. 6–12), and oral testimony was introduced (pp. 13–49).

It is not proper for us to draw any inferences from that record, or comment on it as to the truth of Johnson's complaints in the light of the evidence; that matter is not pertinent or material here, and stands as it was left by his petition, the answer, the replication, the testimony, and the order of the Circuit Court. This court will not now review the facts in that case. Possibly it would not find it necessary to do so if that case were here.

But it can not be assumed that Johnson's charges respecting his trial were unfounded because they were denied or because the answers herein say they were unfounded and were not made in good faith. Testimony was taken on that issue in the Circuit Court. The Circuit Court rendered no opinion, and it does not appear whether the order denying habeas corpus was made because the court deemed the charges untrue, or because, even if true, the court thought there was no valid ground for Federal interference.

With his rights under the State law gone, one by one, in whatever way and for whatever reason, until even the right of appeal to the Supreme Court of the State had been lost, it is not strange that

Johnson challenged that process and result by invoking his Federal rights whatever they were. His appeal to the Federal court was in good faith; it was his only recourse to save his life, if possible. If it was technically frivolous and without merit, it was for this court finally so to determine.

ARGUMENT.

I.

PRELIMINARY.

Some of the points involved may be generally stated and then dismissed or reserved for more detailed discussion.

If Johnson was entitled to be heard in the Circuit Court on his application for habeas corpus, and then in this court on appeal, those are rights secured by the Constitution and laws of the United States. Whatever might have been ultimately decided as to the nature of the other rights which he alleged were denied—whether any or all of them were secured under State law alone or also under the law of the United States—there can be no doubt that the right to initiate habeas corpus proceedings in a Federal court, and the right to come here on appeal if the application is entertained but the writ refused, are Federal rights. A conspiracy such as alleged here would be punishable then under section 5508, Revised Statutes, as depriving a citizen of a privilege secured to him by Federal law; but whether or not that step

shall follow this in due time, that liability can not affect this proceeding.

In the case of *Savin, petitioner* (131 U. S., 267), it was argued that the offense charged was embraced by the statutes and was punishable only by indictment. But the court said (per Mr. Justice Harlan, at p. 275):

> Undoubtedly the offense charged is embraced by that section [R. S. 5399] and is punishable by indictment. But the statute does not make that mode exclusive, if the offense be committed under such circumstances as to bring it within the power of the court under section 725.

Johnson's application was regularly received and heard by the Circuit Court as such, upon answer, replication, and testimony, and was then denied. That was a final judgment of the Circuit Court. The effect of the final order was exactly the same as if the writ itself had been issued and then discharged. The proceeding herein was equivalent to a rule to show cause (Rec., Johnson case, p. 6), and that leads to a final judgment exactly as if the writ were issued.

The law is that from the final decision of a Circuit Court on habeas corpus in the case of any person alleged to be restrained of his liberty in violation of the Constitution or of any law or treaty of the United States an appeal may be taken to the Supreme Court (sec. 763 Rev. Stat.; sec. 764, as amended by the act of March 3, 1885, 23 Stat.,

437). This is still a part of the existing law; and, furthermore, Johnson's appeal was within section 5 of the Circuit Court of Appeals act, because it involved the construction or application of the Constitution of the United States (*Cross* v. *Burke*, 146 U. S., 82; *Ex parte Lennon*, 150 U. S., 393; *Craemer* v. *State*, 168 U. S., 124).

It always rests within the sound discretion of a court to entertain and hear an application for habeas corpus, and then a concrete right to be heard on appeal supervenes, altho the application is heard only to be denied. The defendants seek to show that the habeas corpus proceedings were not in good faith, because the Federal court promptly held that there was no ground for Federal interposition. But that makes no difference. The situation is similar to that in this court when it is held that the court takes and retains complete jurisdiction so long as necessary merely to decide that it has no jurisdiction; and such control and jurisdiction at the threshold, until jurisdiction is deliberately denied on mature consideration, are a protection to every petitioner or appellant. (See *post*.)

It has been decided so often by this court that there is no right to a jury trial in contempt cases that it is only necessary to cite the decisions (*Eilenbecker* v. *Plymouth County*, 134 U. S., 31, citing *Ex parte Terry*, 128 U. S., 289; *Ex parte Savin*, 131 U. S., 267; *Ex parte Cuddy*, 131 U. S., 280). One

sentence from the opinion in the case of *Eilenbecker* v. *Plymouth County* may be quoted:

> If it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it.

In the case of *Interstate Commerce Commission* v. *Brimson* (154 U. S., 447, 489), the court said: "Surely it can not be supposed that the question of contempt of the authority of a court of the United States, committed by a disobedience of its orders, is triable of right by a jury."

See also *In re Debs* (158 U. S., 564), and the many authorities therein cited.

Compare the jurisdiction and summary power to strike the name of an attorney from the roll, altho the offense was a crime by State law for which the offender was liable to be indicted and convicted. The proceeding itself is due process of law, and indictment and trial by jury are not required. See the learned opinion by Mr. Justice Bradley in *Ex parte Wall* (107 U S., 265), which is an interesting authority here because the offense was the engaging in, advising, and encouraging a riotous gathering which lynched a certain criminal, the attorney "thereby showing such an utter disregard and contempt for the law which, as a sworn attorney, he was bound to support, as shows him to be totally unfitted to occupy such position."

II.

The Circuit Court had jurisdiction of Johnson's case, and this court had jurisdiction on appeal.

Section 14 of the judiciary act of 1789 (1 Stat., 81) authorized the courts of the United States to issue writs of habeas corpus, with the proviso that such writs "shall in no case extend to prisoners in jail, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify." Later statutes (act of Mar. 2, 1833; act of Aug. 29, 1842; act of Feb. 5, 1867) extended the authority of the courts in this respect, and now section 753, Revised Statutes, drawn from these acts, provides:

> The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any

> foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify.

Section 755 provides that the court, or justice, or judge to whom such application shall be made shall forthwith award the writ, "unless it appears from the petition itself that the party is not entitled thereto."

The power thus granted to United States courts has been repeatedly held by this court to extend to prisoners in custody under the authority of a State. The leading case on the subject is *Ex parte Royall* (117 U. S., 241), where a prisoner who had been indicted for selling a coupon without a license, under a statute of Virginia, applied to the Circuit Court before trial for a writ of habeas corpus, claiming that the State law was unconstitutional. The petition was dismissed upon the ground that the Circuit Court was without jurisdiction to discharge the prisoner from prosecution, and that judgment was affirmed by the Supreme Court. Mr. Justice Harlan, delivering the opinion of the court, said (pp. 252–253):

> This court holds that where a person is in custody, under process from a State court of original jurisdiction, for an alleged offence against the laws of such State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the Circuit Court has a discretion

> whether it will discharge him upon habeas corpus in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the State court shall have finally acted upon the case, the Circuit Court has still a discretion whether, under all the circumstances then existing, the accused, if convicted, shall be put to his writ of error from the highest court of the State or whether it will proceed, by writ of habeas corpus, summarily to determine whether the petitioner is restrained of his liberty in violation of the Constitution of the United States.

This ruling has been repeatedly approved. (See *In re Terry*, 128 U. S., 289; *In re Loney*, 134 U. S., 372; *In re Neagle*, 135 U. S., 1; *In re Wood*, 104 U. S., 278; *Cook* v. *Hart*, 146 U. S., 183; *In re Frederich*, 149 U. S., 70; *New York* v. *Eno*, 155 U. S., 89; *Whitten* v. *Tomlinson*, 160 U. S., 240; *Baker* v. *Grice*, 169 U. S. 284; *Tinsley* v. *Anderson*, 171 U. S., 101; *Davis* v. *Burke*, 179 U. S., 399.)

An examination of these authorities shows that while the circuit and district courts undoubtedly have the power to issue writs of habeas corpus in behalf of State prisoners, they are not bound to discharge every such prisoner, and they are to proceed under a sound discretion, having in view the particular circumstances of each case and the relations existing between State and Federal tribunals; that there are certain principles guiding their dis-

cretion which are stated as follows in *Ex parte Royall* (117 U. S., at p. 251):

> We can not suppose that Congress intended to compel those courts by such means to draw to themselves, in the first instance, the control of all criminal prosecutions commenced in State courts exercising authority within the same territorial limits, where the accused claims that he is held in custody in violation of the Constitution of the United States. The injunction to hear the case summarily, and thereupon "to dispose of the party as law and justice require" does not deprive the court of discretion as to the time and mode in which it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations existing under our system of government between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution;

that in certain cases of peculiar urgency the courts have interposed by writ of habeas corpus and discharged the prisoner while under commitment by the State authorities and before trial in the State courts (*Wildenhuss' case*, 120 U. S., 1; *In re Neagle*, 135 U. S., 1; *In re Loney*, 134 U. S., 372); but that, except in such urgent and exceptional cases, United States courts will not discharge the prisoner in

advance of a final determination of his case in the State courts; and even after such a final determination they will generally leave him to the usual and orderly course of proceeding by writ of error from the Supreme Court of the State (*Ex parte Royall, supra; Ex parte Fonda*, 117 U. S., 516; *In re Duncan*, 139 U. S., 449; and other authorities cited in *Whitten* v. *Tomlinson* and *Davis* v. *Burke*). As was said by Justice Brown in the last-mentioned case (179 U. S., 399, 402):

> It is recognized, however, that the power to arrest the due and orderly proceedings of the State courts, or to discharge a prisoner after conviction, before an application has been made to the Supreme Court of the State for relief, is one which should be sparingly exercised, and should be confined to cases where the facts imperatively demand it. While the power to issue writs of habeas corpus under Rev. Stat., sec. 753, nominally extends to every case where a party "is in custody in violation of the Constitution, or of a law or treaty of the United States," it is not every such case where the interference of the Federal court is demanded, particularly where the State court is executing its own criminal laws, and is asserting a jurisdiction which does not reside elsewhere, to try an accused person for a violation of such laws. The State courts are as much bound as the Federal courts to see that no man is punished in violation of the Constitution or laws of the

> United States; and ordinarily an error in this particular can better be corrected by this court upon a writ of error to the highest court of the State than by an interference, which is never less than unpleasant, with the procedure of the State courts before the petitioner has exhausted his remedy there.

See also generally *in re Burrus*, 136 U. S., 586.

The facts seemed to "imperatively demand" Federal interposition in this case, not to discharge, but to consider the petition, because the opportunity to apply to the Supreme Court of the State was gone.

In view of these settled principles it is not possible to maintain that the Circuit Court was without jurisdiction, and that Johnson's case could only have gone to the Supreme Court of Tennessee. It was for the Circuit Court to say whether or not the appeal to the Constitution of the United States was a substantial defense. It has been distinctly and repeatedly decided that because the offense is against the State alone and has been adjudged under State laws exclusively, and because the usual course on review is by writ of error from the highest court of the State, and because State tribunals regard and apply the guaranties of the Federal Constitution, are not conclusive reasons why the courts of the United States should not interpose, not only after conviction but even before trial. The necessity or propriety of interposition in any particular case is necessarily committed to the dis-

cretion and determination of the Federal court, subject to review here. And the Circuit Court had as complete jurisdiction, for the purpose and with the result of deciding that the constitutional claim could *not* avail, as if it had decided otherwise and had issued the writ and then discharged the prisoner.

A court is empowered to take a case altho it may not retain it—that is to say, altho it may consider the claim made unfounded. It has jurisdiction to consider and decide either way. The objection here to the jurisdiction of the lower court means nothing more when analyzed than that a case when presented to a court must be impregnable or it is no case at all. Or, putting the matter in a different way, the objection amounts to the proposition that if upon deliberate examination the court concludes that the prayer or claim is without merit—that is, in a case like the present, that the jurisdictional claim of alleged violation of Federal law is without merit, then the court was without jurisdiction *ab initio*. This conception is contrary to the essential idea of the judicial function, which is the considering and deciding of doubtful matters. It is in this view of the judicial function that the court has jurisdiction to decide that it has no jurisdiction; the court takes and retains complete jurisdiction until it concludes that it has none. Manifestly this is true of any case. That is enough to bring a peti-

tioner safe within the shield of the court's power until the conclusion is announced, and, if adverse to the petitioner, until the court's mandate is thereupon issued and received and proceeded with to the surrender of the petitioner to the State.

What does the court mean when it says that the courts of the United States are not bound to discharge every prisoner held in custody under the authority of a State (*Whitten* v. *Tomlinson*, 160 U. S., 231, 240)? That language is a complete answer to the defendants' objections to the jurisdiction of the Circuit Court over Johnson, and to all such implications in those objections which we have just been considering; for the words and the thought obviously and necessarily mean that jurisdiction below is not restricted to an undoubted and palpable violation of the Constitution, but attaches and holds in doubtful cases. The Circuit Court is not bound to discharge every such prisoner, because it may and does remand; and that means of course that it may validly take jurisdiction of a case where the claim of violation of Federal right is not established.

In re Burrus (136 U. S., 586, 591) expresses the same thought, viz:

> It is true that perhaps the court or judge who is asked to issue such a writ need not be very critical in looking into the petition or application for very clear grounds of the exercise of this jurisdiction.

It is well to recall the statutes at this point. "From the final decision of such Circuit Court an appeal *may be taken* to the Supreme Court" "in the case of any person *alleged* to be restrained of his liberty in violation of the Constitution or of any law or treaty of the United States" (secs. 763, 764, R. S.; act of Mar. 3, 1885, 23 Stat., 437). It should also be noted that the answer of the State to Johnson's petition did not challenge the jurisdiction of the Circuit Court nor refer to that matter directly or indirectly (Johnson record, pp. 6–12).

As to this court's jurisdiction we have already touched upon the matter. It is difficult to conceive how the proposition can be denied or challenged. If the Circuit Court has jurisdiction over original proceedings in habeas corpus, then either party has the right to bring the case here. It would seem to be a matter of course and of right under the statutes; but however that may be, in this case a special *allocatur* was granted by the presiding justice and then by the court. It may indeed be said, with deference, that Mr. Justice Harlan first and the court afterwards had no choice whatever but to allow the appeal. Justice Harlan's allowance is exprest to be "pursuant to the statutes of the United States." (Rec., Johnson case, p. 50.)

Apparently no one has ever thought of dispating

the jurisdiction of this court on appeal in such a case involving constitutional grounds, if the Circuit Court took jurisdiction. The right of appeal here follows a final judgment in the court below as surely as day follows night. Certainly no one would challenge the jurisdiction of this court if the Circuit Court had jurisdiction, and accordingly the defendants here deny the jurisdiction of this court simply as a corollary to their contention that the Circuit Court did not possess jurisdiction. But the jurisdiction of this court is not dependent upon contentions, and it has jurisdiction to take the case and retain it for final determination whether it turns out that the Circuit Court had jurisdiction or not.

It may be confidently stated that in no case of appeal on habeas corpus from a decision of the Circuit Court arising under either State or Federal laws, and whether the jurisdiction of the Circuit Court was or was not in question, has any doubt been suggested as to the jurisdiction of this court on appeal.

Whether this court in such a case should affirm or reverse the *judgment* of the court below, that would be in either event tacitly to affirm that court's *jurisdiction* and its own. When any case in this court fails for lack of jurisdiction, either in the court below or here, that cause and effect are made plain by the judgment here, either by dismissal for lack of jurisdiction in this court, or by remanding the case to the court below with in-

structions to dismiss the petition or complaint on the ground of lack of jurisdiction there.

Now it is certain that in no instance has this court dismissed a case of habeas corpus brought to arrest a prosecution in a State court or the execution of the judgment and sentence of a State court because of the alleged violation of rights under the Constitution or laws of the United States, on the ground of lack of jurisdiction in the Circuit Court. Altho the court has laid down rules of guidance and caution for the Circuit Courts which do not limit their jurisdiction, but only direct and restrain its exercise, it has never held that the discretion to entertain a petition was wrongly exercised or that the inferior court proceeded without jurisdiction.

On writ of error from the highest court of a State this court sometimes affirms the judgment, but sometimes dismisses the writ of error on the ground that no constitutional or other Federal question is really and substantially involved (*Brown* v. *New Jersey*, 175 U. S., 172; *Spies* v. *Illinois*, 123, U. S., 131; *Craemer* v. *Washington*, 164 U. S., 704); but in cases of habeas corpus from Circuit Courts involving the authority of State courts, the court has invariably affirmed or reversed the judgment below, thus sustaining the jurisdiction of the Circuit Court. Always a Federal question was necessarily alleged and was sufficiently involved for jurisdictional purposes.

Besides, this court has yet to determine that the

Circuit Court rightly refused to issue the writ or had no jurisdiction to do so, and even if it did so determine, that could only be upon the assumption that it had jurisdiction of the case on appeal. In other words, lack of jurisdiction in the Circuit Court to issue the writ would not mean lack of jurisdiction in this court to entertain and act upon the appeal. *Ex parte Royall* illustrates the point. There the Circuit Court dismissed the petition because it was without jurisdiction to discharge the prisoner from prosecution; but this court took jurisdiction on appeal. It did not decide that the Circuit Court had no jurisdiction; on the contrary, by affirming the judgment and thereby holding that the action of the Circuit Court in discharging was correct, it affirmed its jurisdiction. The form of the Circuit Court's dismissal is somewhat misleading—"without jurisdiction to discharge," etc.; but if it had been held here strictly that the Circuit Court was without jurisdiction, this court would nevertheless have had full jurisdiction of the entire case for that purpose and up to that point.

If Johnson had been permitted to live, a motion to dismiss his appeal or affirm might have been granted on the ground that the Circuit Court had decided rightly in denying his application for the essential reason that no case for Federal interposition had been made. But this would not mean that the court regarded the appeal to the Constitution of the United States as frivolous. Whether it was legally frivolous—that is, not well founded

or set up for delay merely and not in good faith—would be one of the matters to be determined by this court. The court promptly passes upon such cases involving State laws and convictions, but does not readily lean to the suggestion of frivolousness. On the whole, it may be said that when in any case the court is asked to dismiss or affirm on the ground that the Constitution is not really involved and the appeal to it is a mere pretense, the court is not inclined to yield to the suggestion, and is apt to postpone that question to the hearing on the merits, and then often ignores it.

In short, it is perfectly certain that the files of this court are full of cases, civil and criminal, ranging in importance from capital cases to small money demands, from the pleadings and judgments of which it is evident that when a claim under the Constitution of the United States is properly alleged, however unfounded it may turn out to be, this court proceeds deliberately and considers that claim and retains that case in its grasp and under its power in all respects until this court has rendered its final decision and judgment, either to dismiss or to affirm or to reverse.

The opposing contention is in no way strengthened by the immaterial suggestion that Johnson's complaints were against individuals and not against State ordinances or authority. That idea might be challenged on the facts, and of course was one of the questions before the Circuit Court. But if this suggestion were manifestly founded in

verity, the reasons for the distinction between illegal State laws or action and the illegal acts of individuals with respect to the fourteenth amendment (cf. secs. 5508, 5510, Rev. Stat.) are not applicable to this case. We have no occasion herein to argue the proposition that upon the allegations of his petition Johnson was denied the equal protection of the laws and due process of law under color of State authority. We stand on the single proposition, free from all such suggestions and complications, that under the authorities cited the Circuit Court and this court had full jurisdiction of Johnson's case.

III.

The power and jurisdiction of the Supreme Court of the United States to punish contempts of its authority.

This appears to be the only original proceeding in contempt filed in this court. This is the first time in the history of the country and of the court that an order of the court has been disobeyed and its authority contemned. This court preeminently represents and effectuates the judicial branch of power under our Government, and it is more important to sustain its paramount power and dignity than that of any other judicial authority. It is to be certainly assumed, then, that the court will apply in the vindication of its own authority the doctrines which it has laid down in cases coming within its appellate jurisdiction as to the authority of the lower Federal courts over contempts. We

do not need to go back to the common-law authorities on the absolute and inherent power in all superior judicial tribunals to punish contempts; this court has stated in plain and comprehensive language the guiding doctrines (*infra*).

It is certainly a fundamental principle from time immemorial that flat disobedience by anyone within the territorial jurisdiction of the clear and positive order of a court having jurisdiction of the matter is a flagrant contempt. Here the vital fact appears thru the allegations of conspiracy that an order of the court duly promulgated was ignored and set at naught by the defendants. As to precedents for the order, it is understood to be the necessary effect in such cases that the taking or the allowance of an appeal operates as a supersedeas, staying all proceedings under State process and authority pending appeal, and therefore the allowance or order of appeal ordinarily does not specifically direct a stay. (See rule 34.) The State authorities and all other persons bow to the intervening national power, and wait. But here the stay was a part of the order on its face, and that makes the contempt so much the more flagrant.

The following are declarations of the court on the inherent power over contempts, gathering up the settled principles of the common law:

> The power to punish for contempts is inherent in all courts. Its existence is es-

> sential to the preservation of order in judicial proceedings *and to the enforcement of the judgments, orders, and writs of the courts*, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power. (Per Mr. Justice Field in *Ex parte Robinson*, 19 Wall., 505, 510.)

In *Ex parte Terry* (128 U. S., 289, 302, 303) Mr. Justice Harlan, speaking for the court, reviews with entire approval the numerous authorities in this court and in the State courts sustaining the inherent power to punish for contempts, citing the passage from *Ex parte Robinson* above and, among other cases, *Anderson* v. *Dunn* (6 Wheat., 204, 227), which declared that "Courts of justice are universally acknowledged to be vested by their very creation with power to impose silence, respect, and decorum in their presence *and submission to their lawful mandates*." Among the State authorities cited was *Cooper's Case* (33 Vermont, 253, 257), wherein it was said that "The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from necessity; implied because it is necessary to the exercise of all other powers." (See also *Savin, petitioner*, 131 U. S., 267, 274; *Eilenbecker* v. *Plymouth Co.*, 134 U. S., 31, 36, 37; *Interstate Commerce Commission* v.

Brimson, 154 U. S., 447, 489; *In re Debs*, 158 U. S., 564, 595, 596.)

This court is the great court of the United States. It was created *eo nomine* by the Constitution, and there the broad outlines of its power and jurisdiction, original and appellate, were marked out. The creation of the inferior courts was left to Congress. There is an essential difference, then, between the Supreme Court of the United States and all other courts of the United States. First, because this court is preeminent as speaking the last word for the judicial power and carrying into final effect the judicial checks and balances on the other departments of government; and, second, because this court looks to the Constitution, not only for its origin in general, but for its express creation, while the inferior Federal courts look to Congress for their actual being, functions, and jurisdiction. The judicial power, of course, operating thru its three well-known branches of law, equity, and admiralty, was not created by the Constitution, but was well understood and existed long before the Constitution was thought of; but the Constitution vested that power in this court by name and in other courts to be established, and stated to what cases the power shall extend. The office of Congress, under the Constitution, is to distribute and not create judicial powers. The distribution to the Supreme Court and by anticipation to the lower courts was accomplished by the

Constitution itself, which also, in large measure, mapped out the jurisdiction of the courts, and Congress finally ordained and established the inferior courts, applying the power, specifying the jurisdiction in detail, and prescribing the particular cases upon which the power and jurisdiction should operate.

When Congress legislates on the judiciary by creating and organizing inferior courts and by prescribing general rules as to the constitution of the courts, jurisdiction, procedure, etc., it generally deals with this court by name, and there is no doubt that this court is embraced in the law (Rev. Stat., Title XIII, Judiciary, ch. 11, Supreme Court, Jurisdiction). It must be admitted, however, that regarding "Provisions common to more than one court or judge" (ch. 12), the exclusive jurisdiction of "the courts of the United States" (sec. 711) must embrace the Supreme Court in that category, because the seventh paragraph of the section includes controversies where a State is a party, of which the Supreme Court has original and exclusive jurisdiction, and because other suits provided for in that section are within the appellate jurisdiction of the Supreme Court, and of course the justices of this court are embraced within the phrase "any judge of any court of the United States" in section 714. Sometimes the statute enumerates the several courts, including this court; for example, relative to the power to issue writs (sec. 716). But in the

present instance, at least, the phrase "courts of the United States" seems to refer to the inferior courts chiefly or solely and not to this court. Section 725, which we are about to set forth and discuss and which restricts the power of the courts of the United States to punish for contempt, is essentially connected with the preceding section and the following section. In section 724 it is provided that "in the trial of actions at law *the courts of the United States* may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power which contain evidence pertinent to the issue." Section 725 then recognizes but restricts the power of "the said courts" to punish contempts of their authority; and section 726 provides: "*All of the said courts* shall have power to grant new trials in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law."

Now, cases are conceivable, of course, where this court, under section 724, as a court of the United States and a court of chancery, might have occasion to compel the production of evidence, but it is also obvious that the intention of that statute relates chiefly at least to the inferior courts of the United States; and this view of it finds strong confirmation in section 726, which certainly does not mean to include this court in the provision that all of the said courts shall have power to grant new trials. This court can, of course, grant re-

hearings, and it can order new trials in the lower courts by a reversal and *venire facias de novo*. But that is not what the section means. It refers to the *nisi prius* courts. Consequently, we contend that altho this court is necessarily a court of the United States in the general meaning of that term, because it is the greatest court of the United States, yet it is not one of the courts of the United States within the meaning of section 725, Revised Statutes, limiting the power to punish contempts. The power of this court to punish contempts rests upon its inherent power under the common law and as the highest court of the land clothed with unexampled dignity and authority by the Constitution itself.

We are bound to say, however, that the judiciary act of 1789 (1 Stat., 73, 76, 78, 80, 83) provided for the jurisdiction of the district courts (sec. 9), of the circuit courts (sec. 11), of the Supreme Court (sec. 13), and then in section 14, now section 716, Revised Statutes, gives the power to issue writs of scire facias, habeas corpus, etc., to "*all* the *before mentioned* courts of the United States;" and section 15 (now sec. 724, R. S.) specifies "all the *said* courts of the United States," as does section 17 (now sec. 726, R. S.) upon the matter of new trials. It should also be pointed out that the germ of section 725, Revised Statutes, is in section 17 of the act of 1789, following the provision as to new trials, the exact language being—

> *That all the said courts of the United States* shall have power to grant new trials, in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law; *and shall have power* to impose and administer all necessary oaths or affirmations, and to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same; and to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States.

But at all events, and however this point may be regarded on a comparison of the differing statutory phrases and language, the court has intimated the same doubt which is now exprest. Before citing that authority we trace the further development of the statute.

The act of 1831 (4 Stat., 487) was "declaratory of the law concerning contempts of court." It developed section 17 of the act of 1789 as follows:

> That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior

> of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts (sec. 1, act of 1831).

Section 725 combines both the preceding laws, but is in substantially the same form as the act of 1831, providing that:

> The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts.

In *Ex parte Robinson* (19 Wall., 505, 510) the court said, referring to the act of 1831:

> The act in terms applies to all courts. Whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt. But

> that it applies to the Circuit and District Courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction.

This remark must, of course, be regarded as *obiter*, since the authority of this court in the matter of contempts was not in question in *Ex parte Robinson*. But it suggests the reasons why this court in the exercise of its inherent powers derived from the Constitution can not be limited by the subsequent restrictions of an act of Congress professing to apply to all courts of the United States. Such an act of Congress controls the courts of its own creation, but not this court if thereby its organic authority and jurisdiction under the Constitution are curtailed.

The opinions in *In re Tampa Suburban R. R. Co.* (168 U. S., 583) and *In re Vidal* (179 U. S., 126), suggest perhaps that the inherent general power of the court to issue writs may go further than the statutory authority. The statutory authority, however, is invoked in those cases for the refusal to issue the writ, rather than rejected. But we have no doubt that in any proper case the court would hold unhesitatingly that its general and inherent authority, of whatever nature, does not need any statutory grant of power and is not subject to statutory restrictions.

But if section 725 shall be held to apply to this court, the present case is included within its very language. We are not now concerned with contempt committed in the face of the court or so near as to be constructively in its presence (*Ex parte Terry*, 128 U. S., 289, 307; *Savin, petitioner*, 131 U. S., 267, 277, 278; 4 Bl. Com., 286); this is one of the "matters that arise at a distance," and accordingly an instant attachment did not issue but a rule to show cause. But altho a matter arising at a distance and not a question of disturbance or decorum in or near the presence of the court, it is the vital matter of refusing to obey the court's command, which is as serious at the remotest corners of the country as in the court room. The language of the statute is that the power to punish extends to "the disobedience or resistance * * * by any party, juror, witness, *or other person*, to any lawful writ, process, *order*, rule, decree, or *command* of the said courts."

In *Eilenbecker* v. *Plymouth Co.* (134 U. S., 31, 38) this language was emphasized, and the court said:

> It will thus be seen that even in the act of Congress intended to limit the power of the courts to punish for contempts of its authority by summary proceedings, there is expressly left the power to punish in this summary manner the disobedience of any party to any lawful writ, process, order, rule, decree, or command of said court.

That was a case coming up from a State court, and the precise point involved was whether a jury trial was required, and the opinion goes on to state that the statute was only designed for the courts of the United States, but that previous opinions of the court show conclusively the ample and summary power inherent in courts generally to inflict punishment for disobedience to their writs and orders without the interposition of a jury. The citation of the act in that case emphasizes the proposition that even where the power to punish in contempt is restricted, the necessary and fundamental power to enforce obedience to lawful orders or to punish for disobeying them is left untouched. And of course the learned justice who delivered the opinion in that case did not intend by using the word "party" alone, and not repeating the entire enumeration of the statute, to intimate any doubt whatever that disobedience by any person whatever was embraced within the power of punishment.

In *Debs's* case (158 U. S., 564, 594, 595) the court says:

> The power of a court to make an order carries with it the equal power to punish for a disobedience of that order.

It will be noticed that the revision omitted the word "summary" which appeared in the act of 1831. Upon that omission the court has observed (*In re Savin*, 131 U. S., 267, 276):

> And although the word "summary" was for some reason not repeated in the present

> revision, which invests the courts of the United States with power "to punish by fine or imprisonment, at the discretion of the court, contempts of their authority" in certain cases defined in section 725, we do not doubt that the power to proceed summarily for contempt in those cases remains as under the act of 1831 with those courts. It was in effect so adjudged in *Ex parte Terry*, above cited.

Of course this shocking occurrence, conceived in lawlessness and revenge, carried on by violence, and ending with murder at the hands of a mob, was an offense against the State as well as against the United States and this court. But the same act may be a crime both against a State and the United States, and the United States has full power to punish whether the State does or not. (*Cross* v. *North Carolina*, 132 U. S., 131; *Pettibone* v. *United States*, 148 U. S., 197; *Crossley* v. *California*, 168 U. S., 640.)

There can be no doubt, then, we contend, that in every aspect this case is firmly before the court. On the point of jurisdiction in habeas corpus with reference to Johnson's case the Circuit Court had jurisdiction and this court had jurisdiction. This court has complete power and jurisdiction to punish summarily contempts of its authority. The court's express command was disobeyed, and in any aspect, on the ground of inherent power and constitutional authority unrestrained by stat-

ute, or within the restriction of section 725, this court may and should inflict due punishment for that disobedience.

WILLIAM H. MOODY,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

WASHINGTON, *November 24, 1906.*

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No. 4, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

BRIEF FOR THE UNITED STATES ON CLAIM THAT DENIALS UNDER OATH PURGE CONTEMPT.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, complainant, *v.* JOHN F. SHIPP AND OTHERS, defendants.	No. 12, Original.

BRIEF FOR THE UNITED STATES ON CLAIM THAT DENIALS UNDER OATH PURGE CONTEMPT.

The rule was thus stated in the time of Holt, Chief Justice: *Per curiam:* "If one brought in, in contempt, deny all upon oath, he is of course discharged of the contempt; but if he has forsworn himself he may be prosecuted for perjury." (*King* v. *Sims*, 12 Mod., 511.)

Lord Mansfield briefly stated the practice and glanced at the entire field in *King* v. *Vaughan* (2 Doug., 516). That was a rule for an attachment against an attorney for acting as such after having been struck off the roll:

> If the defendant, by his affidavit, fully denies the charge on which the rule for an attachment was granted, that is sufficient; the weight of the evidence or the credibility of what is sworn is never considered;

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> but if the defendant is hardy enough to swear falsely, he is left to be punished by indictment. In chancery they proceed differently; they examine the defendant on interrogatories, and also examine witnesses on both sides, and then decide upon the truth of the charge.

See also 2 Hawkins, Pleas of the Crown (6th ed., ch. 22, p. 213), for a full discussion of the doctrine and practice, from which it is evident that the old rule was laid down with regard to official misconduct by sheriffs, bailiffs, attorneys, inferior judges, jailers, jurors, etc., and relates to contempts of the King's writs, contempt in the face of the court, contemptuous words or writings concerning the court, contempt of its rules or awards, abuses of process, forgeries of writs, and other deceits. Contempt of its award refers only to such a case as submission to arbitration and then refusal to perform the award.

Lord Brougham, for instance, in *Wellesley's Case* (2 Russell & M., 639, 667), considering the distinction between civil and criminal contempts, and citing two cases in the King's Bench, says that nonperformance of an award being a disobedience was a contempt of the court, and so might be regarded as technically speaking and in form an offense; but it had been held that, as it related simply to a civil matter and was rather *in the nature of process to compel the performance of a specific act*, the matter was in substance not criminal but

civil. *Wellesley's Case* is also interesting, because arguments of counsel endeavored to show that there is no just distinction between civil and criminal contempts; that the only real distinction is between simple disobedience and disobedience of an aggravated kind, altho the object in every case is the same—to effect compliance with the order of the court.

Of course a positive command of the court, like the order of the court in the present case, must nevertheless always have been embraced within the power and, one would think, within such comprehensive statement of the practice; but the authorities do not say so. The inference is manifest that the rule of conclusiveness of answer was restricted to comparatively trifling offenses by official persons. (For example, *Matter of Fitton*, 16 How. Pr., 303.) There is no case anywhere to sug gest that it was ever predicated of a crime of the highest magnitude which was also a contempt because it was such a crime.

Coming at once to recent statements, this is what Mr. Justice Brown said (when district judge) in the *May* case (1 Fed. Rep., 737, 743): "It is a cardinal rule in proceedings for a criminal contempt that the answer of the respondent can not be traversed and must be taken as true. If false, the Government is remitted to a prosecution for perjury," citing Blackstone, *United States* v. *Dodge* (2 Gall., 313), and other cases. "But the answer must be credible and consistent with itself and [if

not] the court will be at liberty to draw its own inferences from the facts stated," citing two cases in the Term Reports. "So, then, it is after all a question in every case whether the facts are consistent with an honest intent." The charge there was that a juror had corruptly conferred with a defendant under indictment and on trial. Respondent admitted the interview, but explained the circumstances, denying corrupt purpose or any intention of contempt. Nevertheless the court adjudged him guilty. So that the learned justice in that case exercised his discretion and applied the exception and not the rule. Sound judicial discretion controls. (*In re Perkins*, 100 Fed. Rep., 950, citing *Savin's case*, 131 U. S., 267.)

As to the difference in equity:

> If the answer of a defendant in questions of contempt were conclusive, a decree might lose all its vitality and not be enforced at all. The temptation, in many cases, to defeat the efficacy of a decree by sturdy denial of imputed contempt might be too strong for the virtue of a party. The rule therefore is regarded as well settled in England and in this country that in chancery testimony will be heard to contradict as well as to support the truth of a statement made by one against whom proceedings for contempt had been instituted. (*Underwood's Case*, 2 Humph., 46, 49.)

In another chancery case, where there was no wilful intention to disregard the court's authority

or dignity, it was held that "the breach of the injunction consists in doing the forbidden thing and not in the intention with which it is done." (*Thompson* v. *Penna. Railroad Co.*, 48 N. J. Eq., 105, 109.)

United States v. *Anonymous* (21 Fed. Rep., 761), an equity case, reviews the law of contempt exhaustively and affirms the rule in equity, citing many authorities. In the *Debs* case in the lower court (64 Fed. Rep., 724, 738), the chancery rule is again laid down, and in *United States* v. *Sweeney* (95 Fed. Rep., 434, 446, 447), a similar case in equity, the *Debs* decisions below and here are cited for that rule. Probably the reason why "in chancery they proceed differently" was always what it is stated to be in modern law—there may be no "wilful intention of disobeying the injunction," there may be an absence of wilful intention to contemn the court's dignity and authority and to disregard its order, and yet the court is warranted in taking action *in personam*, because, where there is the infringement of a private right, it is no answer to the complaint of the injured party to say that the party inflicting the injury meant no disrespect to the court. At the same time in remedial as well as punitive contempt proceedings the court deals with the matter as affecting its dignity and power as well as an infringement of a private right. (Pitney, Vice-Chancellor, and authorities cited in *Thompson* v. *Railroad Co.*, *supra*.)

> Without the power to enforce these decrees by punishing disobedience and violation of them, a court of chancery would be worse than useless, and for this reason, perhaps, the practice on the point we are considering differs from that of a court of common law. (*Underwood's case, ut supra.*)

But it is just as important to enforce the orders of a court of law by punishing disobedience and violation of them, and the authority of the court and the compulsions of the criminal law are quite as sacred as property rights. The "perhaps" in the above quotation and the "at least" of Justice Gray in *Cartwright's Case, infra*, imply modern dissatisfaction with the distinction. It is not that the equity rule is wrong, but that the rule at common law ought to be the same.

Returning to the rule at law—it was thus referred to in *Savin, petitioner*, already frequently cited. It was there contended that the court should have required the service of interrogatories so that the respondent in answering them could purge himself of the contempt charged.

> The court could have adopted that mode of trying the question of contempt, but it was not bound to do so. It could, in its discretion, adopt such mode of determining that question as it deemed proper, provided due regard was had to the essential rules that obtain in the trial of matters of contempt. * * * If the appellant was entitled, of right, to purge himself under oath

> of the contempt, that right was not denied to him; for it appears from the proceedings in the district court, made part of the petition for habeas corpus, not only that he was informed of the nature of the charges against him by the testimony of Flores, taken down by a sworn stenographer at the preliminary examination, but that he was present at the hearing of the contempt, was represented by counsel, *testified under oath in his own behalf*, and had full opportunity to make his defence. (Per Mr. Justice Harlan, 131 U. S., at pp. 278, 279.)

In other words, his oath did not clear him; he had full opportunity to make his defense, but he had to make it, and was adjudged guilty. That was a direct contempt, as was the offense in *Ex parte Terry* and other cases before the court. The point seems never to have been squarely presented or adjudged in this court, either as to direct or constructive contempts, altho, of course, as to contempts in the face of the court no court would apply the common-law rule but would construe the facts and determine wholly for itself and from its own observation. The point might have been adjudged, however, and the failure to raise and clearly decide it in constructive contempts or direct contempts not in actual presence of the court seems to show that the rule is by no means obvious and certain in recent times. For instance, the point was manifest in *In re Watts and Sachs* (190 U. S., 1), a case of constructive contempt, and yet

it was not made and the case was argued and decided on the question of jurisdiction and the proposition that attorneys are not guilty of contempt for a mere error of judgment when advising in good faith. It is very clear that no one thought of invoking the common-law rule in that case, for the answers were traversed and oral and documentary evidence adduced, and petitioners were found guilty of contempt by the lower court. (190 U.S., at foot of p. 15.)

In *People against Few* and others (2 Johns., 289), the offense charged was characterized by the court as an "impropriety." In *Matter of Moore* and others (63 N. C., 397, 405, 406, 408), there was a political attack profest to have been directed against the individuals who were judges and not to have been intended to impair the respect due to the court's authority. The court vindicated its power of self-protection, characterized the publication as libelous, but discharged the rule, saying:

> The law is well settled in this class of cases *where the intention to injure constitutes the gravamen.*
>
> The rule rests on sound reason. In this proceeding, as the court is judge in its own case in the *first* instance, where a case is made out in the judgment of the court, the party in the *last* instance is allowed to *try himself*. His *intention* is locked within his own breast, is known to himself alone, and he is permitted to purge himself by his own

> avowal. He can not be convicted, *if he is innocent*, as he may be *by false evidence, before a jury*. For the court does not try him—he tries himself. C. J. Wilmot's Opinion, 257-8, referred to on the trial of Judge Peck, 507. If the party, after the court decides against him, declines to *try himself*, it must be because *he knows himself to be guilty*.

The italics are the court's. The last sentence is significant here as showing that the court need not admit the purging force of the answer; it is within the discretion of the court; and that no defendant wishes his answer to be conclusive if the court decides against him on that denial, but wishes to go on and be tried. He naturally wishes then to adduce evidence himself.

The North Carolina case only shows that when the insult was disavowed the court acted with a high sense of generosity and decorum and excused. The respondent "is not *acquitted*, but is *excused*." That was far worse than an impropriety; it was a direct insult upon the judges, but it was not a crime. So in other cases: *In re Walker*, 82 N. C., 95, was not only a constructive contempt, but it was a technical and relatively trifling matter, an alleged obstruction of process without intentional disrespect. See *State* v. *Earl* (41 Ind., 464); *Burke* v. *State* (47 Id., 528); *Haskett* v. *State* (Id., 51, p. 176); *Oster* v. *People* (192 Ill., 473, 479), wherein it was said: "In criminal contempts alleged to have been committed out of the presence of the

court, if the contemnor's answer is sufficient to acquit of the charge he must be discharged." That means, I think, that an answer consistently explaining the facts and denying intent is sufficient to *excuse*, not acquit; it does not mean that merely to deny the facts wholly acquits, where the gravamen is crime and a disclaimer of *intention* to commit *contempt* really plays no part. The *intention* to commit the *crime* and the commission of it (to be established by proof) dispose of any disclaimer of intention to commit contempt. At least that disclaimer can not be conclusive at this stage, but proof must be offered in support of it.

On the other hand, there are numerous authorities which refuse to follow the rule, e. g., *Hughes* v. *People* (5 Colo., 436), *State* v. *Simmons* (1 Ark., 265), *Matter of Snyder* (41 N. Y., 302). See also this case on appeal (103 N. Y., 178, 181) wherein the court said: "The surrogate was not necessarily concluded by these bald and uncorroborated assertions of the defaulting executor, and as the question is not only one to be determined upon evidence, at least conflicting, but also rests in discretion, which has not been unfairly exercised, we find no ground on which we can review his decision." *Wise* v. *Chaney* (Circuit Judge, 67 Iowa, 73) is a similar case. *Crow* v. *The State* (24 Tex., 12, 14) precisely rules the point, the court saying:

> The party is entitled to answer, and the answer should be under oath, showing cause, if any he can, why the judgment nisi

> should not be made absolute but should be set aside. It is for the court to decide whether the answer purges the contempt or not. The court is not confined to the answer, but may hear other evidence upon the question of fact involved.

In *Cartwright's Case* (114 Mass., 230) Mr. Justice Gray, as chief justice of the Supreme Judicial Court of Massachusetts, discusses the power to punish for contempt, and says:

> "As regards the question whether a contempt has or has not been committed, *it does not depend upon the intention of the party, but upon the act he has done*." By Taney, C. J., in *Wartman* v. *Wartman* (Taney, 362, 370). In a court of chancery, *at least*, his oath is not conclusive in his favor, but may be contradicted by other evidence [citing *King* v. *Vaughan*, *supra*, among other authorities]. But in the present case his own testimony fails to clear him, etc.

(The italics are mine.) That is to say, Mr. Justice Gray does not appear to look with favor on the old rule in the courts of law and he approves the discretion which held that the respondent's contempt was not purged by his answer. The situation there suggests again that an answer to have this force must explain satisfactorily, must confess and avoid; bare denial is not enough. "A mere disclaimer of intention of contempt does not purge the contempt or relieve the party of the consequences of the act committed by him." (*Watson* v.

Bank, 5 S. C., 159, 182.) That case cites an equity authority, but was not itself an equity case.

> It is further claimed that the respondents, having been examined as witnesses under oath, and having testified that they acted in good faith and intended no disrespect to the court, thereby purged themselves of the contempt, and that no further proceedings could thereafter be had against them except a prosecution for perjury. That may be the practice in some jurisdictions, but we agree with the Supreme Court of New Hampshire that the better practice is to receive other testimony and settle the whole question of contempt in one proceeding. (*Huntington* v. *McMahon*, 48 Conn., 174, 200, 201, citing *State* v. *Matthews*, 37 N. H., 450.)

I submit that the following deductions from the foregoing review are sound:

The rule has shifted from the old common-law statement; on the whole, it is weakening; it is no longer true that bare denial of the fact suffices—either denial of the facts alleged or the *factum* of contempt existing in those facts. A respondent now sets forth by his answer his version of the facts, matters in extenuation, disclaimer of intention. It must be consistent and credible in itself; a court has discretion to construe and allow or reject it. Sometimes, in effect, the disclaimer is an apology to the court, which is received as matter of grace. The rule applies to matters technical in their bearing and affecting official relations to the

court, which often involve serious offenses, it is true, but not grave crimes. There is much conflict of authority thruout this country, and many well-considered decisions reject the rule. Originally the rule seems to have applied exclusively to officers of the court, or of the executive, or to jurors, and to have related to minor matters not embracing the breach of an order by any person which led to a major crime. Probably at that time the rule had not been fully established that the power over contempts does not depend on the question whether the offense might or might not be punished by indictment. Indictment would be preferred, and such crimes would naturally go to prosecution in that course.

At all events, regarding the development of the power in contempt and of the rule since those days, it seems absurb to maintain now the distinction between courts of law and chancery, whatever the reasons for the distinction once were or however the distinction is now sustained for the benefit of property rights. That is to say, if to protect mere rights of property thru the equity jurisdiction an answer denying contempt in violating an injunction is not conclusive, why should it be conclusive in a court of law, proceeding, as it may, to vindicate its own dignity and authority and the sanctions of the criminal law? No valid reason can be given, and in these days the distinction should cease and the rule in equity be extended to the whole field.

This sheriff was an officer of the executive of the local government. I can not see why it is material to consider whether the court's order constituted him an officer *pro hac vice* of this court, or operated upon him as an individual citizen, being the officer of the State, who had legal custody of Johnson, or strictly as such officer. If the Government of the United States operates over every foot of American soil and upon every individual by means of physical force, if necessary, how can it be doubted that within that power, and as a branch of it, this court's order went to Sheriff Shipp with sovereign force in whatever capacity he is regarded, having in fact the legal custody of the prisoner?

In *Ex parte Siebold* (100 U. S., 371, 395) the "official agents" of the United States happened to be officers of the United States, special deputy marshals appointed under an act of Congress, and the language just referred to was dealing with a possible clash between State and Federal authority and the respective functions of the State and the Nation as to the preservation of peace and good order. But was not Mr. Shipp an agent of this court when he received that order, and being such, was he not an official agent of the United States, even if he was not strictly an officer of the court or of the United States *pro hac vice?* Surely he was a person subject to the order of the court, and was an agent of the court for the purpose of obeying the order and carrying out its command by retaining the prisoner in safe custody.

The order of the Circuit Court was—

> That the petitioner be remanded to the custody of the sheriff of Hamilton County, Tenn., to be detained by him in his custody for a period of ten days, in which to enable the petitioner to prosecute an appeal from this order, if he may be advised that an appeal lies and may so choose, and in default of the prosecution of an appeal within said time, to be then further proceeded with by the State court under its sentence; the order on the sheriff to retain custody of the prisoner for the period of ten days for the purpose above mentioned being made on the application of the prisoner himself.

The order of this court was that "all proceedings against appellant be stayed and the custody of the said appellant be retained pending this appeal."

The authorities on the particular point are not numerous. Mr. Justice Story, in *Randolph* v. *Donaldson* (9 Cranch, 86), announced this rule:

> For certain purposes and to certain intents, the State jail lawfully used by the United States may be deemed to be the jail of the United States and that keeper to be keeper of the United States.

In a civil matter issuing in proceedings in contempt the Supreme Court of Illinois has held that—

> When a court makes an order appointing a particular person a depositary of the court funds, and such person, knowing of such or-

> der, accepts the deposit, he unquestionably becomes *pro hac vice* an officer of the court. (*In re Western Marine & Fire Ins. Co.*, 38 Ill., 289.)

But that case was distinguished, and the rule in that broad form somewhat doubted, in *Southern Development Co.* v. *Railway Co.* (27 Fed. Rep., 344), and *Cartwright's Case* (*ante*) was also distinguished as being a case where there was no doubt about the official relation.

The point was nearly ruled in *In re Birdsong* (39 Fed. Rep., 599), wherein it was held that—

> For the purpose of safely keeping, properly caring for, and humanely treating prisoners committed to his custody by a court of the United States, a keeper of a county jail of a State, who receives such prisoners, and is paid for their maintenance, is an officer of the United States court. (Head note.)

Returning, in conclusion, to the rule and the view that at least a court has discretion to determine whether it will discharge upon the sworn answers—there is no doubt of this; it is an essential part of the court's unlimited power with respect to contempts. But it is impossible to suppose that this court would so exercise its discretion as to discharge at this stage upon bare denial defendants who, if guilty, according to one of their counsel, "deserve no quarter." That is a hard saying, too hard; but they would certainly deserve punishment, and the Government is entitled to the

opportunity to prove its case, and if proved to bring the defendants before the court for such penalty as it may see fit to impose. I take it to be conceded by the defendants that, assuming the facts alleged in the information to be true and the defendants to be guilty of the conspiracy and the crime perpetrated as charged, their acts were a "disobedience or resistance" of the order within the statute.

This was in strict law a constructive and not a direct criminal contempt; but its nature and circumstances make it quite as grave in essence as misbehavior in the face of the court. Flat disobedience of an order of the court by lawless persons at a distance, and collusion therewith, ending in a capital crime, are indeed much more serious than ordinary misbehavior and indecorum in the presence of the court. The import of the word "constructive" must be qualified by remembering that some constructive contempts are worse than direct contempts. There are interminable confusions and unwarranted distinctions in the law of contempts between *ordinary* and *extraordinary*, *civil* and *criminal*, *direct* and *constructive*, *remedial* and *punitive*; but this was *aggravated*, which makes it unnecessary to pursue the distinctions. There are many contempts "as aggravated as those directed at the court itself in open court." (*United States* v. *Anonymous*, *supra*, and instances noted, 21 Fed. Rep., at pp. 769, 770.)

Probably there is no case like this in the books; I can find none. But if a contempt should consist, as this one did, in a conspiracy to murder and in murder accomplished, or in arson, is it reasonable or possible to contend that a criminal may thus limit the power of punishment, and, because the proceeding is by contempt and not by indictment, deny his crime and then be liable to the bare possibility of the lighter charge of perjury? It is just about as reasonable to say that this should be his right under a plea of not guilty to an indictment.

In other words, a contempt committed by a crime is none the less a crime because it is a contempt (*Debs's* case, 64 Fed. Rep., at p. 753), and the court should deal with the acts as crime, altho proceeding as for a contempt. It is to be remembered that this was not a mere breach of injunction in equity; it was not only a "criminal contempt" in the narrow technical sense; it was the crime and sin of murder, whether or not the guilt of any defendant now before the court is established. The anomaly of "trying a man on his own oath," which Blackstone excused as in favor of liberty (4 Bl. Com., 287), ought not to survive into these days. This case shows that it is not in favor of liberty but in favor of crime.

HENRY M. HOYT,
Solicitor-General.

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FILED.
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~~No. 10, Original.~~

In the Supreme Court of the United States.

~~OCTOBER TERM, 1906.~~

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOHN F. SHIPP ET AL.

MOTION FOR THE SUMMONING OF WITNESSES AND TO TAKE TESTIMONY HEREIN.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, complainant, *v.* JOHN F. SHIPP ET AL.	No. 12, Original.

MOTION FOR THE SUMMONING OF WITNESSES AND TO TAKE TESTIMONY HEREIN.

In order that the facts may be ascertained by the court as to the connection of the defendants herein with the matters which the court has held constituted contempt of its authority, the Attorney-General moves the court to take testimony herein as to the complicity of the defendants in such matters, and to examine, under oath to be administered by the court, any witnesses ordered to be summoned in behalf of the United States or of the defendants, subpœnas therefor to be issued by the clerk of this court, with full rights of cross-examination and objection as to the admission of evidence and the competency of witnesses to counsel for both parties; such evidence to be taken in open court unless it shall appear to the court

appropriate to appoint a commissioner or examiner to receive and record the same and then to report such testimony, with any exceptions thereto made as aforesaid, forthwith to the court.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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No. 5 Orig.
O. T. 1907

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In the Supreme Court of the United States.

[redacted]

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP ET AL.

MOTION TO ARREST DEFENDANTS AND REQUIRE RECOGNIZANCES TO ABIDE THE FUTURE ORDERS OF THE COURT.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, complainant, *v.* JOHN F. SHIPP ET AL.	No. 12, Original.

MOTION TO ARREST DEFENDANTS AND REQUIRE RECOGNIZANCES TO ABIDE THE FUTURE ORDERS OF THE COURT.

The court having decided the preliminary questions of law herein against the defendants and ordered the case to proceed, the Attorney-General moves the court to order writs of attachment to issue that the said defendants may be brought into court and required to enter into recognizances, in such sums, respectively, as to the court shall seem adequate and proper, conditioned for their appearance whenever required and to abide the future orders of the court herein, said recognizances to be given, with good and sufficient sureties, approved by this court, unless it shall seem to the court appropriate that the said defendants, or any of them, should be permitted to appear and furnish such recognizances before the judge of the Circuit Court of the United States for the Eastern District of

Tennessee, in conformity with or analogy to the provisions of section 1014 of the Revised Statutes of the United States, in which event it is further moved that the sureties be approved by the said judge and by the justice of this court assigned to the Sixth Circuit.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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No. 5 Orig.
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~~Nov. 12, Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOHN F. SHIPP AND OTHERS, DEFENDANTS.

SUGGESTION OF THE ATTORNEY-GENERAL IN REPLY TO BRIEF FOR CERTAIN DEFENDANTS ON MOTION TO TAKE TESTIMONY.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, complainant, *v.* JOHN F. SHIPP AND OTHERS, defendants. } No. 12, Original.

SUGGESTION OF THE ATTORNEY-GENERAL IN REPLY TO BRIEF FOR CERTAIN DEFENDANTS ON MOTION TO TAKE TESTIMONY.

In the brief filed by certain of the defendants reasons are suggested why the testimony should be taken at Chattanooga, and the court's order directing that it shall be taken before a commissioner appears to designate Chattanooga as the place. The Attorney-General now respectfully requests the court to reconsider this designation and to designate the city of Washington, at least for the purpose of taking the testimony of witnesses for the United States, for the following reasons:

1. The defendants themselves need not attend the hearings in Washington unless, as is unlikely, they wish to be personally present, and their counsel will probably find it no serious hardship to come to Washington.

2. If the defendants are, in fact, inconvenienced and suffer some hardship through loss of time or money, or both, these are ordinary and necessary incidents of their situation. They rest under a charge which must be tried. A *prima facie* case has been made out, in the sense that proofs against them are now to be offered and they are called upon to meet the charge. It may be fairly assumed that it is not wholly without their own fault that they are in this position. Defendants generally must attend the trial court at its usual place of session, either personally or by counsel. The official duties of some among them need not, and should not, change that rule in this case. The entire sheriff's force need not be withdrawn from Hamilton County merely to listen to the testimony for the United States; and it is right and customary, not harsh and arbitrary, to bring witnesses from any part of a district to the court. The court does not go to them. The entire country is the district in the present case, and the court only sits in Washington; the city of Washington, then, is the natural place for the taking of the testimony. This is none the less true because an officer of the court and not the court itself is to take the testimony, and because the defendants have the right to be present, if they are not compelled to be present.

3. It seems to us very important that the testimony should be taken under the eye and direct control of the court, to afford opportunities for

immediate reference to the court by, and instructions from the court to, the commissioner in connection with unexpected incidents which may readily occur during the examination of witnesses in a case like this one, wholly without precedent.

4. Finally, it is submitted that the locality where this terrible occurrence took place, and where (as appears from the crime itself, from the record in Johnson's case, and from the oral argument herein on the preliminary questions of law) the feelings of certain portions of the community have been and are still greatly excited, is an unsuitable place for this examination, at least of the witnesses for the United States. In that locality the real facts can not be elicited in a calm and dispassionate atmosphere, free from the danger that local prejudice and a sense of personal insecurity may stifle or check the full and frank utterances of the witnesses for the prosecution; and the Attorney-General deems it his duty to advise the court that confidential information in the possession of the Department of Justice, of a character entitled to credit, indicates that witnesses for the United States may reasonably, and will in fact, entertain apprehensions of danger to themselves if they testify at Chattanooga.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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In the Supreme Court of the United States.

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THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

NOMINATION TO THE COURT OF COMMISSIONER TO TAKE THE TESTIMONY.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA, complainant, *v.* JOHN F. SHIPP AND OTHERS, defendants.	No. 12, Original.

NOMINATION TO THE COURT OF COMMISSIONER TO TAKE THE TESTIMONY.

The Attorney-General has the honor to report that counsel of record for the defendants unite with him in the nomination to the court of James D. Maher, esq., of the District of Columbia, to take the testimony of the witnesses in this cause.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK

No. 5, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

MOTION FOR LEAVE TO TAKE ADDITIONAL TESTIMONY.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE UNITED STATES OF AMERICA, complainant,
v.
JOHN F. SHIPP AND OTHERS, defendants.
} No. 5, Original.

MOTION FOR LEAVE TO TAKE ADDITIONAL TESTIMONY

The Solicitor-General, appearing for and on behalf of the United States, moves the court to reopen the hearing of testimony in this case and to reappoint Mr. James D. Maher as commissioner for the purpose of taking and returning additional testimony to the court in this behalf.

In support of this motion the Solicitor-General shows and represents to the court that under the original order of reference to the said commissioner the Government and the defendants took their testimony in the city of Chattanooga, Tenn., in the year 1907, and closed their case in June of that year; that said commissioner subsequently made his report as to the taking of testimony, which was opened, published, and filed pursuant to an order of court; that while, since the taking of testimony was closed as aforesaid, the Government

has made no further effort to find additional testimony, the Department of Justice recently and unexpectedly was informed that two persons who were not examined on the former hearing were eyewitnesses of part of the incidents connected with the lynching of the prisoner, Ed. Johnson, which is involved in this information, and could identify two of the defendants herein as connected therewith; that the Department thereupon caused this matter to be inquired into through the office of the United States attorney for the Eastern District of Tennessee and was advised by him that these two persons will so testify and will identify two of the defendants in question.

The Solicitor-General further represents and shows to the court that he is advised that these two parties did not previously make known their knowledge of these facts in reference to this matter on account of fear, and that there was no means by which the Government could have been previously advised as to the information which they possessed or could have obtained their testimony on the former hearing.

The Solicitor-General further represents and shows to the court that this application for leave to take additional testimony is not made for purposes of delay, but solely that justice may be done and all material evidence brought to the attention of the court.

He therefore prays that the taking of testimony may be reopened, and that the said James D. Maher may be reappointed as commissioner, with the same powers as under his original appointment, and may be directed to proceed at an early and convenient date to the city of Chattanooga, Tenn., there to take the testimony of the two witnesses in question, together with any rebuttal testimony which any of the defendants may desire to offer in that behalf, or further testimony which may be rendered necessary in behalf of the Government by reason of such rebuttal evidence, if any, and to report such additional testimony to the court.

Respectfully submitted.

HENRY M. HOYT,
Solicitor-General.

NOTICE OF SUBMISSION OF MOTION TO TAKE ADDITIONAL TESTIMONY.

....., ...

ATTORNEYS FOR DEFENDANTS:

Please take notice that on the ..... day of ....., 1908, at the opening of the court, or as soon thereafter as counsel can be heard, a motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of said court thereon.

HENRY M. HOYT,
Solicitor-General.

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Office Supreme Court, U. S.
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OCT 8 1908
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No. 5, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP ET AL.

MOTION OF THE ATTORNEY-GENERAL TO DISMISS AS TO CERTAIN DEFENDANTS.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant. *v.* JOHN F. SHIPP ET AL.	No. 5, Original.

MOTION OF THE ATTORNEY-GENERAL TO DISMISS AS TO CERTAIN DEFENDANTS.

The Attorney-General, on behalf of the United States, moves that the information herein be dismissed as to the defendants Paul Pool, T. B. Taylor, William Beeler, John Jones, Marion Perkins, C. A. Baker, Claude Powell, Charles J. Powell, A. J. Cartwright, R. F. Cartwright, John Varnell, Joseph Clark, Fred Frauley, Paul or "Sheenie" Warner, Alfred Hammond, William Marquette, and George Brown, and that they be discharged from their respective recognizances entered into pursuant to an order of this honorable court made herein on the 21st day of January, 1907, without prejudice, however, to the right of the United

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States to prosecute this proceeding as to each and all of the other defendants herein with the same force and effect as if the proceeding against the above-named defendants were not dismissed.

Testimony has been taken and the cases of all parties closed. All of the testimony has been reported by the commissioner, printed, published, and filed pursuant to an order of the court.

Efforts to serve Paul Pool with process in this proceeding have been unsuccessful. He left Chattanooga soon after the lynching and has never since been located, according to our information.

The proof fails to disclose any evidence implicating defendants T. B. Taylor, William Beeler, John Jones, Marion Perkins, C. A. Baker, Claude Powell, Charles J. Powell, A. J. Cartwright, R. F. Cartwright, or John Varnell in the acts complained of in the information.

The defendant John Jones is not the John Jones which the Government witnesses testify to having seen in the lynching party. The witnesses stated positively that he was not the same party (pp. 442, 604).*

Testimony as to the defendants, Joseph Clark, Fred Frauley, Paul or "Sheenie" Warner, Alfred Hammond, William Marquette, and George Brown, is deemed insufficient to justify further prosecution. The proof as to each of these last-named defendants is referred to below:

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*All page figures herein refer to pages of original record of testimony filed in the United States Supreme Court.

Joseph Clark, a deputy sheriff. The only evidence against Clark was given by Joe Franklin (colored), as follows (p. 522):

> Q. Did you see any of the deputy sheriffs in the crowd?
>
> A. I saw one I knew.
>
> Q. Who was he?
>
> A. Joe Clark.
>
> Q. Where was he?
>
> A. He was in the first bunch. (Meaning the crowd closest to Johnson when he was taken from the jail.)
>
> Q. What was he doing?
>
> A. He either had a shotgun, or had a stick, I don't know which, in his hand.

Upon cross-examination the witness was indistinct as to what crowd Clark was with. He testified:

> Q. * * * Which bunch was he in? (A pause.) You know which bunch he was in without stopping to study, do you not?
>
> A. No, sir; I don't.
>
> Q. You do not know which bunch he was in?
>
> A. I know he was in the crowd.
>
> Q. You do not know whether he was in the first, second, or third bunch, do you?
>
> A. I am not positive.
>
> Q. You are not positive whether he was in the fourth or fifth bunch? Was he not behind the whole crowd?
>
> A. I am not positive.

Q. About what part of the crowd was he in?

A. I am not positive.

Q. Haven't you any idea about it?

A. I am not positive.

Q. Haven't you any idea where he was?

A. I know he was there, but I kept no record of exactly where everybody was.

Q. You have not the slightest idea, and you can not give the court the slightest idea as to what part of that crowd he was in, can you?

A. I know he was in the crowd.

Q. Whereabouts?

A. I couldn't tell you. I know he was on Walnut street.

Q. All you can tell is that you saw him on Walnut street?

A. Yes, sir.

Q. And that is as near as you can describe his position there that night?

A. In the crowd; yes, sir.

Q. You saw him on Walnut street?

A. Yes, sir.

Q. But you will not say whether he was in the first, second, third, fourth, or fifth bunch?

A. I will not.

Q. You will not say whether he was in the front rank, leading the charge, or in the rear rank, coming up with the stragglers?

A. No, sir.

Q. You have not the slightest idea which he was in?

A. Not now.

(pp. 675, 676.)

Q. I am asking you if you have any recollection right now as to where that man was?

A. No, sir; I have not.

Q. You have not the slightest recollection?

A. No, sir.

(pp. 687, 688.)

Fred Frauley, a deputy sheriff. There is nothing tending to show that Frauley was at the jail when the lynchers were there or was present at the lynching or had anything to do with the lynching party. The only evidence unfavorable to him was given by Press Walker (colored), cook at the jail at the time of the lynching. He testified:

Q. Did you hear anything said about anything the Supreme Court had done?

A. Yes, sir; I heard that.

Q. Who was talking about that?

A. Well, Captain Brown told me that a telegram had come, which I had seed it, that there was one come there. A boy brought something there. They said it was a telegram. Of course I didn't read it.

Q. You did not see the telegram yourself?

A. No, sir.

Q. That was before you left?

A. Yes, sir.

Q. You do not know what was in it?

A. No, sir; I couldn't say that.

Q. Did you hear any of the deputies say anything about any telegram?

A. Well, after so long a time, Captain Shipp says, "Now what will you do?" just so, and Mr. Frawley or Mr. Brown said, "Now, you are the sheriff. It is up to you about what to do." They said, "You are the sheriff."

Q. What time did you go away?

A. Well, I think it was near 3 o'clock.

(pp. 290, 291.)

Paul or "Sheenie" Warner. This man sets up an alibi (pp. 830–869), and the only evidence tending to show that he participated in plans for the lynching or the lynching is the following, given by A. J. Ware, an intelligent witness for the Government:

Q. Who were the men that brought out Johnson?

A. I do not know, sir.

Q. Did you recognize them at that time?

A. Well, I thought I recognized one, but I would not make affidavit that I did.

Q. Have you an impression about it?

A. What is that?

Q. Have you a recollection as to whom you recognized?

A. I thought I recognized a young man by the name of Warner.

Q. What is he generally called? Has he a nickname, do you know?

A. "Sheeny" Warner.

Q. How long have you known him?

A. I have known him for a number of years, but, as I told you, I would not swear it was him because his face was blackened to some extent.

Q. His face was blackened?

A. Yes. I could not recognize him for certain, and would not say it was him.

Q. Did you speak to him?

A. No, sir. I did not speak to any one.

(p. 412.)

By Mr. Chamlee.

Q. Relative to Mr. Warner, if you saw him at all that night—the man you referred to, you say, was a man that you could not recognize? You said that he had his face blackened, did you?

A. Yes, sir; there was smut or something on the face of the man.

Q. There was something on the face of the man you referred to, and you could not say that it was Mr. Warner at all, and do not say it now?

A. I would not attempt to say it was him, positively; no, sir.

Q. This was a dark night, and it was dark at the place where you saw him?

A. No; it was light where I saw him. I saw him in the jail lobby.

Q. Still, you do not attempt to say it was Mr. Warner?

A. No, sir.

(p. 424.)

Alfred Hammond. This man sets up an alibi (pp. 623–677), and the only evidence against him is that of John N. Stonecipher, as follows:

A. I went in (saloon) and Padgett had the Morning Times, and the first word he said, he said: "This damn paper has

printed a lie about this lynching." I said, "How do you know it is a lie, Henry?"

Q. What did he answer?

A. Well, he told me he was there.

Q. Did anything further occur in that conversation? What was the condition of his shoes, if you noticed?

A. And just as he said that, Alf. Handman came in.

Q. Is he one of the defendants in this case?

A. Yes, sir; I suppose so.

Q. He came in?

A. Yes, sir; and Henry just turned up his shoe this way. He says, "Why, I haven't got the mud off my shoes yet." Alf. says, "I cleaned mine before I come."

Q. Was anything further said between you at that time?

A. And Henry says, "We did the nigger up all right, didn't we?" Alf. said, "You bet we did." That was all that was said.

(pp. 267, 268.)

It is denied these statements were made (pp. 647, 1038).

The identification of Hammond in this connection is not strong. Stonecipher did not know Hammond at the time, but, upon asking Padgett, was informed that it was he (p. 271). He has not seen Hammond since the occurrence (p. 268).

William Marquette. The only evidence connecting him with the lynching is that of Joe Franklin (colored). He stated that when the lynchers came

out of the jail and went up the street to the bridge where the lynching occurred he saw Marquette in the fourth or fifth crowd behind the one which had Johnson, about 50 yards behind Johnson, but that he never saw him do anything and never saw him near Johnson at all (pp. 520, 600–602).

From this it appears that if Marquette was present at the lynching it was not as a participant.

Marquette sets up an alibi which he supported with considerable testimony (pp. 776–828).

George Brown, a deputy sheriff. Brown was the day jailor (pp. 286, 1295). His official duties were entirely at the jail and commenced at 6 in the morning and ended at 6 at night (pp. 1295, 1296). He had rooms at the jail and spent some of the nights there (p. 286). But about half of the time he went to Hill City, about a mile and a quarter from the jail, when his duties were finished at night (pp. 1292, 1297, 1300). He left the jail at 6.15 the night of the lynching and went to Hill City, where he remained all night (pp. 1298, 1354, 1360, 1361, 1379, 1397, 1402). There is no evidence to contradict these facts.

The only evidence which could be construed as showing that Brown had knowledge that there would be a lynching or that he aided in preparing the jail so that the lynchers would not be opposed in getting Johnson is that relating to the conversation between Shipp, Frauley, and Brown, above set out, and the testimony of Waller, a prisoner

at the jail, that on the afternoon of the day of the lynching he heard Brown, in reply to a question asked by Roach (another prisoner) if he was looking for a mob that night, say "it looked pretty warm outside" (pp. 450, 487). Brown denies making this statement (p. 1307).

A number of witnesses testified to Brown's good character (pp. 1351, 1362, 1379, 1380, 1385, 1390, 1406, 1418, 1423).

Upon the above state of the evidence it clearly appears to be the duty of the Attorney-General to move to dismiss the information as to the defendants herein enumerated, and accordingly this motion is submitted to the court after due notice to and service upon all counsel in the cause.

CHARLES J. BONAPARTE,
Attorney-General.
HENRY M. HOYT,
Solicitor-General.

OCTOBER, 1908.

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No. 5, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOSEPH F. SHIPP ET AL.

INFORMATION IN CONTEMPT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant, v. JOSEPH F. SHIPP ET AL. } No. 5, Original.

INFORMATION IN CONTEMPT.

BRIEF FOR THE UNITED STATES.

The information filed in this case by the Attorney-General of the United States charged, in substance, that February 11, 1906, Ed Johnson, a negro, was convicted of rape by the criminal court of Hamilton County, Tenn., held in Chattanooga, and was sentenced to death; that on March 3 following Johnson filed a petition for a writ of habeas corpus in the United States Circuit Court sitting in Tennessee, alleging that in the trial he had been deprived of constitutional rights; that on March 10 said petition was dismissed and the writ denied, petitioner being remanded to the sheriff of Hamilton County to be detained in his custody for ten days, in which to enable petitioner to prosecute an appeal, and in

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default of such appeal to be further proceeded with by the state court under its sentence; that on March 17 Mr. Justice Harlan, of the United States Supreme Court, allowed an appeal from the decision of the Circuit Court, and on March 19 an order was made by the Supreme Court allowing said appeal; that defendant Shipp, sheriff of Hamilton County, then was notified by telegraph of said order, which stayed all proceedings against Johnson and required Shipp to retain custody of Johnson pending determination of the appeal; that before 6 o'clock in the evening of March 19 a full account of this action of the Supreme Court was published and circulated in the evening papers in the city of Chattanooga; that defendant Shipp was the sheriff of Hamilton County and defendants Matthew Galloway and Jeremiah Gibson, among others, were his deputies; that the deputies as well as the sheriff were fully advised of the action of the Supreme Court and were informed and had every reason to believe, from current reports and rumors conveyed to them, that an attempt would be made on the evening of the 19th or early in the morning of the 20th, by a mob composed of a large number of armed men, to force an entrance into the county jail for the purpose of taking Johnson therefrom and lynching him; that notwithstanding said information and said reports the sheriff withdrew from the jail early in the evening of the 19th the usual and customary guard and left in charge thereof only the night jailer—defendant Gibson—and committed

other acts and did other things evincing a disposition on the part of said sheriff to render it less difficult and less dangerous for the mob to prosecute and carry into effect its unlawful design and purpose of lynching Johnson; that about 9 o'clock in the evening of said March 19, defendants and others conspired to break into the jail for the purpose of taking Johnson therefrom and lynching him, with intent to show their contempt and disregard for the above-mentioned order of this court and prevent it from hearing the appeal of Johnson; that pursuant to this conspiracy and in order to show their contempt and disregard for said order of this court, between 9 and 12 o'clock in the evening of said March 19, at Chattanooga, Tenn., defendants, excepting Shipp and Gibson, assembled with others, broke into the jail, took Johnson out by force, and lynched him; that Gibson was the only officer at the jail when the mob broke in, and that while the mob was in possession of the jail defendant Shipp arrived but made no effort to prevent the mob from taking Johnson from the jail; that defendants Shipp and Gibson were in sympathy with the mob while pretending to perform their official duty of protecting Johnson, and that they aided and abetted the mob in prosecution and performance of the lynching; that all of these acts were committed by defendants with the intent upon their part to show their contempt and utter disregard for the above-mentioned order of this court and to prevent it from hearing Johnson's appeal.

All of the defendants, excepting Paul Pool, have appeared and answered the information. It has been impossible to locate Pool, and consequently no service has been made upon him. The Attorney-General has filed a motion that the information be dismissed, without prejudice, except as to the following defendants: Shipp, Galloway, Gibson, Nolan, Williams, Justice, Padgett, May, and Ward. The answers, except the questions of law raised by them, which have already been passed upon by this court, consist of a general denial and, except in the cases of Sheriff Shipp, Gibson, and Williams, the setting up of an alibi by each defendant. Williams admits that he was at the jail a short time before and at the time Johnson was taken from it by the mob, and that he followed the mob and witnessed the lynching, but denies participating in the acts of the mob.

Certain preliminary questions of law were raised by defendants and passed upon by the court (203 U. S., 563). It was there held that the complaint sufficiently set forth a contempt of this court; that it was immaterial for the purposes of this proceeding whether or not the Circuit Court had jurisdiction of the habeas corpus proceedings or whether this court had jurisdiction to entertain the appeal; and that the answers of the defendants under oath disavowing intent did not purge them. This decision removes from the case all questions of law except those as to the admission of evidence. The question

now before the court is one of fact: Has the United States in the evidence, which has been taken by the commissioner under order of this court, proved the allegations of the information? Most of those allegations are established by agreement (6)* or undisputed evidence. The only issues are: (1) Were the sheriff and his deputies informed and did they have every reason to believe that an attempt would be made in the evening of March 19 by a mob to break into, and take Johnson from, the jail for the purpose of lynching him? (2) Did the sheriff and his deputies commit acts and do things manifesting a purpose and disposition on their part to render it less difficult and less dangerous for the mob to lynch Johnson and aid and abet the mob? (3) Were defendants, excepting Shipp and Gibson, members of the mob which lynched Johnson, or did they participate in the conspiracy? (4) Did defendants in the things they did intend to show contempt of the order of this court and to prevent it from hearing Johnson's appeal?

THE LYNCHING AND PRECEDING EVENTS.

January 23, 1906, a rape was committed upon a white woman in or near Chattanooga, Hamilton County, Tenn. (75, 2136, 2137).

At that time and at all times hereinafter mentioned defendant Shipp was the duly elected, qualified, and acting sheriff of Hamilton County, Tenn., and as such sheriff had and exercised full charge and

*All figures herein refer to paging in the original report of testimony, i. e., marginal paging.

control of the county jail located in Chattanooga, and was the legal custodian under the laws of Tennessee of all persons duly committed in said county under the laws of the State to confinement and imprisonment within the jail, and the defendants, Matthew Galloway and Jeremiah Gibson, were duly appointed, qualified, and acting deputy sheriffs under Shipp (9).

January 25[a] Shipp and his deputies arrested Ed Johnson, a negro, in or near Chattanooga, charged with the crime (2136, 2137).

Late in the afternoon of the same day Johnson was, by order of the judge of the state Criminal Court, taken by Sheriff Shipp to Dayton and from there to Nashville, where he was kept until the day of his trial, February 6. Johnson was removed and kept away from Chattanooga during this period because of fear that he would be lynched (1638, 1674, 1675, 1732, 1737, 2138, 2139, 2147).

The night of January 25 a large mob, 1,600 or 1,800 strong, some say, attacked the jail at Chattanooga where Johnson and another negro, also arrested for rape, were supposed to be confined (74, 75, 197, 198, 376, 377, 1374, 1643, 1673, 1732).

Three of Shipp's deputies were at the jail, and, with the assistance given them by the police, the chairman of the safety committee, and others, prevented the taking of any prisoners from the jail (75, 377).

At the suggestion of the deputies the mob appointed a committee, of which defendant Justice was one, to

[a] All dates refer to the year 1906 unless otherwise specified.

go through the jail and satisfy itself that Johnson was not there (381, 382, 1674, 1736).

Even after this committee had reported that the persons whom the mob sought were not in the jail it was necessary to use force to put the mob out of the jail yard (377, 381, 384).

The dangerous and violent character of this committee and the mob and their anger at not being able to find Johnson is shown by the testimony of M. N. Whitaker, prosecuting officer for Hamilton County (1641, 1642); S. D. McReynolds, judge of the criminal court of that county (1733–1737); and defendant Galloway (2087–2091).

One other night about the same time the officers thought there was to be a mob (98). The militia was called out twice about that time to protect the jail against a mob which sought to take Johnson's life (152, 1800).

January 26 a special grand jury was convened and the next day indicted Johnson for the crime above referred to (1738).

February 6 Johnson was brought to Chattanooga from Nashville and his trial commenced that day in the criminal court of Hamilton County (2147).

February 9 he was convicted and sentenced to death (6).

The date of execution was originally fixed as March 13, but on or about March 11 was changed to March 20 (113, 1680).

No appeal was taken by the lawyers appointed by the court to defend Johnson (1676, 1677).

Two daily papers were published in Chattanooga, the *Times*, a morning paper, and the *News*, an evening paper, both having a large circulation (26, 55, 1771).

Mr. Thomas, an attorney appointed by the court to defend Johnson, made the following statement, which was published in the Chattanooga *Times* of February 10, as to the reasons why an appeal was not prosecuted in Johnson's behalf:

> *To the people of Chattanooga:*
>
> I can not leave my fellow-citizens ignorant of what occurred on yesterday. If any lawyer for a prisoner and any 12 jurors trying a prisoner should have the sympathy of the people, that sympathy should be freely given to the jurors and the defendant's attorneys in this case. What we have suffered, the mental strain we have been under, the weight of the burden of the responsibility upon us, can not be told. The horror and awfulness of the last few days are things I hope never again to be called on to endure.
>
> When the jury brought in a verdict of guilty we, as the attorneys, had to settle the question whether the case would be appealed to the Supreme Court. I felt that we should not bear that responsibility alone, and I went to Judge McReynolds and asked him to appoint three other lawyers to meet with Judge Shephard, Mr. Cameron, and myself, and counsel and advise with us and help to share with us the responsibility. Judge McReynolds granted my request and appointed Messrs. Foster V. Brown, Robert Pritchard,

and J. H. Cantrell, and said to me that these three gentlemen would meet us at the office of Garvin & Cantrell at 1.30 o'clock yesterday afternoon. We all met at that hour and we were in consultation until 3 o'clock. The case was reviewed and our duty and the rights of the defendant were discussed. The most careful reflection was given to the horrible crime charged against the defendant, and the fact that a jury had, upon their oath, fixed that crime on the accused man. We discussed the recent mob uprising and the state of unrest in the community. It was the judgment of all present that the life of the defendant, even if the wrong man, could not be saved; *that an appeal would so inflame the public that the jail would be attacked and perhaps other prisoners executed by violence.* In the opinion of all of us a case was presented where the defendant, now that he had been convicted by a jury, must die by the judgment of the law, or else, if his case were appealed, *he would die by the act of an uprising of the people.*

We discussed the trial, and it was agreed by all that it was quiet and orderly and fair according to the forms of the law, and that no error had been made in the charge or in admitting or excluding evidence. All were agreed that the jury was one of the best which ever sat in our court-house. Messrs. Brown, Pritchard, and Cantrell agreed that Judge Shephard, Mr. Cameron, and I had performed our full duty in our disagreeable task, and that if a mistake were made and the defendant were not the right man the mistake was not charge-

able to us and the responsibility not on us. In view of all the conditions, it was the unanimous vote that the law ought to be allowed to take its course if Judge McReynolds were satisfied with the verdict, and if he were to approve it and pass judgment of death on it.

It was suggested that we ought to go to the jail and see the prisoner and lay the facts before him, and if he demanded an appeal, then he ought to have that right under the law. Judge Shepherd, Mr. Cameron, and I went to the jail and spent a half hour with the man. We asked him if he felt that we had performed our duty in his defense, and he answered that he did not know what more we could have done for him. I said: "Ed, we don't know whether you are the guilty man or not; but you and God knows. The jury says you are the man." His reply was: "Yes, they have put it on me, and I guess I have to take it but I ain't guilty." I then said to him: "Ed, your life has been saved up to this time, but the people believe, now that the jury have acted, more than they ever did before that you are the right man. They are outraged against you and *even if you are innocent, as you say you are, we do not believe that we can save your life.*" Judge Shepherd explained to him his right of appeal; that the supreme court met in September next; that an appeal would stay the judgment until that time; that we did not see any reasonable ground to suppose that the Supreme Court would reverse the sentence, and that *we feared an appeal would cause mob violence*

against him. I asked him if he had ever heard the story of "Old Dog Tray," and he said he had. I told him that Old Dog Tray lost his life because he was found in bad company; and I said: "Ed, the Last Chance saloon is bad company. If you are an innocent man, you, like Old Dog Tray, were found in bad company. Old Dog Tray lost his life on that account, and it looks like you must lose your life on the same account. The jury would not believe your bad company. If you die, Ed, and you are innocent, your bad company will be the thing that kills you, because the jury refused to believe anything they said."

Without giving all that occurred at the jail, he said to us that *he did not want to die by a mob;* that he would do as we thought best. He said he would go over to the court-house and tell the judge that he did not have anything more to say than that he was not the guilty man.

I want the people to know that the foregoing facts moved us to allow the law to take its course under the verdict of the jury and the judgment of Judge McReynolds. Six lawyers settled it in this way after the calmest reflection and under the keenest sense of the great responsibility.

In view of the awfulness of the crime committed, I beg that the sheriff and every peace officer of Chattanooga and Hamilton County will still try to get all possible further light, and if any person anywhere knows anything whatever tending to show or reflect light on

> either the guilt or innocence of the defendant, I beg that such person make known all that he may know to us or to Attorney-General Whitaker.
>
> W. G. M. THOMAS.
>
> (1677, 1678, 1705, 1768, 1785, 1926, 2167–2170.)

On the afternoon Johnson was convicted he was secretly taken from Chattanooga to Knoxville because of fear of mob violence to him (1591–1596, 661, 662, 1640, 2152, 2172).

From the time the crime was committed until after Johnson's trial the people of Chattanooga were greatly excited over the crime and Johnson's alleged connection with it, and there was great apprehension on the part of the people as well as the officers that attempts would be made to lynch Johnson (153, 198, 201, 661, 662, 1690, 1800, 1801, 1826, 1835, 1873, 1882, 1901).

It was because of this intense excitement and the feeling that speedy execution of Johnson might prevent his being lynched that Johnson was so quickly indicted and tried (1766).

While the trial was in progress extra deputies were sworn in and an unprecedented number of guards were kept around the court-house and at the jail at night (76, 78, 198, 199, 201, 207, 315, 496, 512, 662, 1369, 1370, 1643, 1740, 2073).

Guns to be used in protecting the jail against a mob were purchased (76).

March 3 Johnson filed a petition for a writ of habeas corpus in the United States circuit court for

the northern division of the eastern district of Tennessee (6).

March 10, 1906, said petition was denied, the Circuit Court ordering that Johnson be remanded to custody of the sheriff of Hamilton County, Tenn., to be detained by said sheriff in his custody for ten days in which to enable said petitioner to prosecute an appeal from said order, and in default of the prosecution of said appeal in said time, to be then further proceeded with by the court of the State of Tennessee under its sentence (7).

This order was made public through the press (26–33).

Johnson was at Knoxville, where he had been kept since his conviction, for hearing upon his petition, and was taken back to Chattanooga March 11 (76, 77, 2172).

March 17 application was duly presented by Johnson to Mr. Justice Harlan of the Supreme Court of the United States, asking that an appeal be allowed to that court from the order of the said Circuit Court denying Johnson's petition for a writ of habeas corpus. This appeal was allowed by Mr. Justice Harlan on the same day (7, 8).

March 18 the Chattanooga *Times* published notice that application for said appeal had been made (34–37).

March 18 the following telegram was received by Judge Clark of the said United States Circuit Court,

and by his secretary was communicated to Sheriff Shipp on the afternoon of that date:

WASHINGTON, D. C., *March 18.*

To Hon. C. D. CLARK,
United States Circuit Court,
Chattanooga, Tenn.

Have allowed appeal to accused in habeas corpus case of Ed Johnson. Transcript will be filed to-morrow and motion also made by Johnson counsel for formal allowance of appeal of court.

JOHN M. HARLAN,
Associate Justice.

(13, 14, 1720.)

March 19 the Chattanooga *Times* published news of the allowance of the appeal by Justice Harlan, in which it said:

> From these authorities it was learned that the granting of an appeal in a case like this acted to supersede all process in the state courts. No stay is necessary, according to the authorities, and the statute is self-operative. Pending a decision of the appeal there can be no execution by any state authority.
>
> TWO ALTERNATIVES NOW.
>
> There are two alternatives depending upon the final decision in Washington. In case the appeal is dismissed, which may be done at noon to-day, the prisoner will be remanded to the state court at once and then must be again taken into open court and resentenced, giving another term of from thirty to sixty days between the time of sentence and its execution.

> In case the petition for a writ of habeas corpus is granted under the record in the case the prisoner will be released from custody under his present conviction and the state court will have the privilege, in case it is found feasible, to indict him and try the case again. It is given out by competent legal authority that the grounds for a release will be the sustaining of the defendant's contention that his constitutional rights have been violated (39–44).

March 19 an order was made by the United States Supreme Court allowing an appeal to said court from the judgment of said Circuit Court denying petition for writ of habeas corpus, as follows:

Ed Johnson, Appellant, *v.* The State of Tennessee.

> On motion of Mr. E. M. Hewlett, of counsel for the appellant, it is ordered by the court that an appeal from the Circuit Court of the United States for the Eastern District of Tennessee be and the same is hereby allowed, and that all proceedings against the appellant be stayed, and the custody of the said appellent be retained pending this appeal.
>
> Per Mr. Chief Justice FULLER. (8.)

About 1 o'clock in the afternoon of said March 19 the deputy clerk of the Supreme Court delivered the following telegram to a telegraph company for transmittal to the addressee:

> WASHINGTON, *March* 19, 1906.
>
> To SHERIFF OF HAMILTON COUNTY, TENN.
>
> *Chattanooga, Tenn.*
>
> Supreme Court of United States has allowed Ed Johnson appeal from Judge Clark's order,

and directed all further proceedings stayed and custody of Johnson retained pending appeal here. See section 766 Revised Statutes of United States.

JAMES H. MCKENNEY,
Clerk Supreme Court, U. S. (11, 12.)

This was received by the telegraph office at Chattanooga about 3.30 on the same afternoon and delivered between 4 and 5 o'clock on that afternoon (64, 68, 71).

About 2 o'clock on the afternoon of the 19th Judge McReynolds told Sheriff Shipp that the Supreme Court had granted a stay in the Johnson case and that thereafter Johnson was a federal prisoner (1747,1776, 2180–2182).

Between 2 and 4 of the afternoon of said March 19 the following telegram was received by Judge Clark, and by his secretary communicated to Sheriff Shipp, at the jail, about 5 o'clock that afternoon, with a copy of the statute therein referred to:

WASHINGTON, D. C., *March 19, 1906.*

Hon. C. D. CLARK, United States Court,
Chattanooga, Tenn.:

Court has just allowed appeal in Johnson's case and ordered all further proceedings against him delayed and custody retained pending appeal here. It will be well to call attention of state officers immediately to section 766 of Revised Statutes.

JOHN M. HARLAN. (15, 16, 2180.)

The statute referred to reads:

Pending the proceedings on appeal in the cases mentioned in the three preceding sections,

and until final judgment therein, and after final judgment of discharge, any proceedings against the person imprisoned or confined or restrained of his liberty, in any state court, or by or under the authority of any State, for any matter so heard and determined, or in process of being heard and determined, under such writ of habeas corpus, shall be deemed null and void.

Provided, That no such appeal shall be had or allowed after six months from the date of the judgment or order complained of.

Shipp understood that thereupon Johnson was held as a federal prisoner. (2182.)

There was published and circulated in Chattanooga, in the evening paper published in that city, on March 19, about 4 o'clock, an account of said action of the Supreme Court (8, 55–60), under the headlines, "An Appeal is Allowed. Ed Johnson Will Not Hang To-morrow." This reads, in part:

> The gallows in the Hamilton County jail has again been disappointed in the case of Ed Johnson, convicted by the state courts of rape and sentenced to death. The hanging will not take place to-morrow morning, as scheduled.
>
> * * * * *
>
> After the argument and motion to-day it will, in all probability, be two or three weeks before the opinion will be handed down by the Supreme Court, and Johnson's lease on life is therefore of an undetermined period. However, he will not be hanged to-morrow, though all preparations for the final scene have been

made. The action of the associate justice of the Supreme Court acts as a stay of execution in Johnson's case, and even if the motion for an appeal is not granted, it will in all probability be nearly sixty days before he could again be sentenced and the execution carried out.

Provided the United States Supreme Court decides to overrule Judge Clark's decision, the case will then be tried on its merits before the Supreme Court, and the discussion of whether or not constitutional rights have been infringed upon will, if the Supreme Court decides favorably for the prisoner, cause the granting of a writ of habeas corpus for the negro, and he will be set at liberty. This being the case, a new indictment and a new trial will in all probability be gone through with.

* * * * *

The decision of the Supreme Court that Johnson had not been granted his inalienable rights under the Constitution would serve to give him his liberty, while the decision that he had not would close the doors of the jail forever against him. He would then be taken to the state court and resentenced, and after a period of about thirty days he would be executed.

The news of that action of the court was also posted on a newspaper bulletin (97).

After hearing of the stay, Shipp says that he made no effort and gave no orders to have deputies or others guard the jail, but left the night jailer, defendant Gibson, there alone (2182).

The county jail at Chattanooga, in which Johnson was confined on the 19th, consisted of four stories, two above ground and two below ground. Entrance to the jail was on the third floor, counting from the bottom. In the front part of the building, on this third floor, was an office section. An iron door led from this section into the jail proper; that is, the protected part of the building, where the prisoners were kept. Johnson was confined on the top floor. To reach him from outside the jail it was necessary to go through the offices, through the iron door between the offices and the jail proper, up a flight of stairs, through a steel-barred door, right behind which was a circular door consisting of heavy steel bars several inches apart, which revolved so as to make a passage. Passing through this circular door, one came into a corridor around which were cells having iron doors which could be locked. It was in one of these cells that Johnson was confined (2195–2198, 84, 85, 90, 348, 358, 359, 513, 514, 1194, 1995, 1996, 2017).

The jail was located in a populous neighborhood and there were houses around it (1779).

In the evening of the 19th a white male prisoner was removed from the upper floor of the county jail in Chattanooga, leaving only Johnson and a white woman on that floor (124, 449, 1997, 1998.)

This same man had been removed in the same way at the time of the first attempt to lynch Johnson (449).

About half past 8 that night a number of men entered the jail (182, 357–360) and went directly and

without resistance to the door leading to Johnson's corridor (85). There is a variance of evidence as to whether the door leading from the offices to the jail proper was locked during the evening (513–515, 2000–2002), but if it was locked when the mob came it was easily broken down (2001–2002).

Gibson was the only officer there at the time, and he was on the top floor with Johnson (85, 171, 358, 362, 375, 2000).

Keys were obtained from him (86) without resistance (2003, 2020, 2021), but, as the lock on the door leading to the corridor where Johnson's cell was located had been struck by a member of the mob, the keys would not work (87, 360, 2005).

The mob, with sledge and ax, then began to break the bolts on the corridor door (87, 183, 361).

About 12 men were actively engaged in breaking down the door and in all subsequent events of the lynching (21, 85, 104, 360, 364, 411, 413, 911, 1669). Some of these men were masked (21, 88, 360, 364, 411, 2186).

A crowd of spectators began to gather around the jail soon after the mob reached it, and continued to gather in and around the jail until Johnson was taken out (19, 80, 223, 241–243, 364).

This crowd was variously estimated from a few to 150 or more (171, 243, 331, 374, 410, 411, 421, 1669, 1777).

It took over an hour to break the bolts on the corridor door (88, 89, 182, 361).

Two men then went through the circular door and *in a few minutes* brought Johnson out with his arms tied with a rope (20, 91, 1198).

When Johnson was thus brought out, the dozen men or so composing the mob grabbed him (91).

This mob took Johnson from the jail to the county bridge over the Tennessee River, which is about six blocks—a ten-minute walk—from the jail (22, 92, 330).

Johnson was taken from the jail a little after 10 o'clock (91, 92, 364, 408).

From the references already given it is apparent that there was no interference or attempted interference of any consequence with the mob before it left the jail, and there was none after it left (22, 92).

The crowd which had gathered around the jail followed the mob down to the bridge (93, 1199).

When the bridge was reached the mob took Johnson a little beyond an arc light, put a rope around his neck, threw it over a beam, and swung him up (23, 93, 415).

At the bridge the mob actively engaged in lynching Johnson were close to him and separated by a space from the crowd of spectators (331, 336, 1199).

The first time Johnson was swung up, the rope broke or slipped and he fell (23, 93, 104, 333).

He was swung up a second time and shot (23, 93, 1284, 1285).

After some shots were fired, Johnson again fell, and while lying on the ground was again shot (24, 333, 417, 1286, 1289).

It was about ten minutes after the mob had reached the bridge until Johnson was killed (23).

The above facts tell, in a general way, the story of the lynching and events leading up to it and are not disputed in any material point.

SHERIFF SHIPP.

The evidence clearly shows that Sheriff Shipp, directly after receiving notice of the stay of execution by the Supreme Court, had reason to believe that a mob would that night attack the jail in an attempt to take and lynch Johnson; in fact, the conclusion is irresistible that one in Sheriff Shipp's position at that time must have felt certain that the jail would be attacked that night. The evidence also clearly establishes that by his omissions to provide any protection whatsoever for the jail that night or to take any action of any kind to guard against the forming or attack of a mob, or even to attempt to ascertain, through his deputies or others, what possibility there might be of an attempt to lynch Johnson, Shipp not only evinced a purpose to render it less difficult and less dangerous for the mob to lynch Johnson but he knowingly aided and abetted the mob. After Shipp had received information that the mob was at the jail for the purpose of taking Johnson to lynch him, Shipp, by rushing to the jail without calling upon anyone for assistance or communicating in any way with anyone, placing himself, practically without resistance, in the hands of the mob, and making no effort to protect Johnson or to interfere or get others to interfere with

the work of the mob, and by his failure to make any effort to ascertain the identity of the persons in the mob, again manifested a desire upon his part to make the work of the mob as easy as possible and to assist it.

There is a variance of testimony as to the condition of public sentiment and the existence of apprehension of the lynching of Johnson at the time the lynching occurred. But the evidence tending to show that a lynching was not expected to occur on the 19th, if not knowingly false, establishes great ignorance of the witnesses as to actual conditions. It is utterly unreasonable to say that the lynching of Johnson was not expected to occur then. It will be remembered that the crime was committed on January 23 and Johnson was arrested January 25. That night a mob attacked the jail in which he was supposed to be and ascertained that he was not there. Johnson was kept in Nashville from that day until his trial commenced, February 6. Immediately upon his being convicted, February 9, he was taken away from Chattanooga and kept away until March 11, the day after his petition for habeas corpus was denied. It is not controverted that intense and unprecedented feeling against Johnson existed from the time of the crime until after his conviction and that this feeling frequently manifested itself, although Johnson was not in Chattanooga from the time of his arrest until his trial began. The bitterness of this feeling and the great apprehension of the officers of mob violence is seen in the testimony of defendants' own witnesses describing

the precautions and secrecy exercised by them in the way they took Johnson in and out of Chattanooga, as well as by the fact that they kept him away from Chattanooga all of the time from the day of his arrest until March 11, two days before the time set for his execution, with the exception of the three days he was there attending his trial (2138–2150).

This mob spirit was not confined to Chattanooga, but was encountered, as testified by Sheriff Shipp, all along the route over which he took Johnson in going from Chattanooga to Nashville immediately after Johnson's arrest (2140–2142).

Distrust and apprehension of the delays of the law and fear that Johnson's execution would be delayed by various appeals were at the bottom of the mob spirit which existed. Effort was made by defendants to show that the mob which attacked the jail on the 25th was moved by an abhorrence of the crime and not fear of delays of the law; that there was no reason to fear the delays of the law would again create a mob, and that the sheriff and his deputies might feel assured that a mob would not endeavor to get Johnson after the first abhorrence of the crime had passed away. But this abhorrence of the crime was as great at one time as at another. This is testified to by one of defendant's witnesses (1815, 1816), and must necessarily have been so. Assuming, however, that defendant's contention that the abhorrence of the crime and not fear of the delays of the law was the cause of the mob spirit was right,

this feeling of abhorrence was simply slumbering, and it needed only to bring the crime prominently before the public again in order to arouse the lawless spirit and create a mob.

The proceedings in the federal courts furnished the occasion for again calling to the public's attention the horrors of the crime and the dangers of the law's delay, and the newspapers did this. After Johnson's conviction he was immediately removed from Chattanooga and kept away from there for over a month. During that period the papers referred to the crime but little, and naturally public excitement over it would not be so apparent. Moreover, the public believed that Johnson would be executed on March 13 until the reprieve to March 20 was granted on March 11 (1816, 1863, 1868, 1886, 1920, 1931).

After the petition for habeas corpus was denied by the Circuit Court, the community believed that Johnson would then be executed on the 20th (1681).

Sheriff Shipp testifies that inflammatory reports of the habeas corpus proceedings and efforts to appeal the case to the Supreme Court were sent out by the newspapers on March 11, and that because of that he had fear of mob violence to Johnson (2154).

From that time the papers kept the crime of which Johnson was convicted and the efforts made by Johnson's attorneys to obtain an appeal constantly before the public (1818). In addition to the articles already referred to we find the following:

March 16 the Chattanooga *Times* published a statement that a negro attorney had gone to Washington

to obtain an appeal from the order denying the petition for habeas corpus. This article said:

> People here are decidedly anxious as to whether Johnson is to suffer death for his crime next Monday or escape for an indefinite period by reason of intervention of the court at Washington. More unrest on the subject exists than was anticipated when Johnson was brought back to the county.
>
> * * * * *
>
> During the recent days of suspense as to his execution the desire for information has been feverish, and telephones at localities where information has been thought to be obtainable have been kept busy by inquirers. (1832, 1833, 1890, 1891.)

In the *News*, published the evening of March 19, there was an editorial which reviewed the local proceedings and said:

> THE JOHNSON CASE AGAIN.
>
> *The public seems to have an erroneous idea of the situation in the Ed Johnson case.* Briefly, the appeal which stops the execution of the negro to-morrow is from Judge Clark's court, at Knoxville, and not from the state court of this county. The attorneys for the condemned prisoner applied to the federal court for a writ of habeas corpus. After hearing the case several hours at Knoxville, Judge Clark denied the application. Before entering upon the consideration of the application for writ of habeas corpus, Judge Clark ruled that the side which lost could appeal from his

decision. He decided the case against the negro, and now an appeal has been taken to the Supreme Court of the United States. The higher court can now either uphold or reverse Judge Clark's decision. If Judge Clark is upheld, then the negro will be brought before Judge McReynolds again for a new sentence. If Judge Clark is overruled and the writ of habeas corpus allowed, then the case will be heard upon its merits; and if it be found that the negro has been deprived of his constitutional rights the case will probably be remanded for another hearing.

The general impression among lawyers is that the Supreme Court will uphold Judge Clark. If it does, it will be thirty or sixty days before Johnson can be legally executed, as we understand the case.

All of this delay is aggravating to the community. The people of Chattanooga believe that Johnson is guilty and that he ought to suffer the penalty of the law as speedily as possible. If by legal technicality the case is prolonged and the culprit finally escapes, there will be no use to plead with a mob here if another such crime is committed. Such delays are largely responsible for mob violence all over the country (313).

On the same afternoon a paper was published by negroes referring to the order of the Supreme Court. The character of the article was such that it would inflame the community and cause trouble. It had a headline to the effect that Ed Johnson would not die to-morrow and told about the stay of execution. "It

was published in a flamboyant, braggadocio sort of way" (61–64).

The fact that white attorneys had failed to appeal Johnson's case to the state Supreme Court and that negro attorneys were almost entirely responsible for the habeas corpus proceeding in the Circuit Court and the appeal from its order could only have the effect of exciting the public, and it is testified that it had a dangerous effect upon the lawless element (1818, 1819, 1922).

It is absurd for the defendants and their witnesses to assert that the community was in a state of peaceful repose on March 19 and the preceding days. It is idle for them to say that they did not apprehend mob violence to Johnson. Johnson had been kept away from Chattanooga, with the exception of the three days of his trial, from the time of his arrest until two days before the time set for his execution. What was it that made the officers, who, throughout this period, had been so apprehensive, feel sure that Johnson would not be mobbed? So long as the date fixed for execution was only a few days off, they might justify themselves upon that ground, but when an appeal had been taken and *execution stayed indefinitely*, what was there that had suddenly changed the feeling in this community which only a month before had manifested itself so strongly in favor of lynching Johnson that his attorneys would not prosecute an appeal for him because they thought he would die at the hands of a mob if not immediately executed?

Assurances that mob violence was not expected and that there was no occasion for providing more than the usual guard of one man for the jail in Chattanooga in which Johnson was confined are contrary to all reason, and can not be believed. They are inconsistent with statements made by Sheriff Shipp and his deputies that they were looking for a mob on the next day. Officers and others were heard to say that they expected a mob would attempt to lynch Johnson on the 20th (116, 122). What is there in this case that furnishes the least justification or foundation for a belief that a mob would be considerate enough to wait until the 20th? If the officers expected a mob at all, and they say that they did, they never can make reasonable men believe that they expected it on the 20th, but not on the 19th. But assuming they expected it on the 20th, no orders had been given and nothing had been done up to 8.30 o'clock on the night of the 19th to protect Johnson from the mob which was expected the next day.

The week before Johnson was lynched Shipp was heard to say that if the execution was stayed Johnson would be mobbed (208, 209). Testimony to this effect was given by the colored servant in Shipp's house. Although this is disputed by Shipp and relatives of his who, the servant says, were there at the time, her statement has every appearance of being truthful.

May 28, Shipp, in an interview with a newspaper reporter, said:

> I am frank to say that I did not attempt to hurt any of them [meaning members of the mob], and would not have made such an attempt if I could. * * * The Supreme Court of the United States was responsible for this lynching. * * * Many nights before the lynching there had been a sufficient guard around the jail. *I looked for no trouble that night, and on the contrary did not look for it until the next day.* * * * In my opinion the act of the Supreme Court of the United States in not allowing the case to remain in our courts was the most unfortunate thing in the history of Tennessee. * * * The people of Hamilton County were willing to allow the law to take its course, until it became known that the case would not have been disposed of for four or five years by the United States; the people would not submit to this and I do not wonder at it. These proceedings in the United States Supreme Court recently appear to me to be only a matter of politics (162, 171, 172).

Testimony that Shipp made these statements is corroborated by the statement of another reporter who interviewed Shipp on the following day regarding them (317–319), and is not denied by Shipp.

Little need be said about the testimony of Whittaker who prosecuted Johnson, and McReynolds who sat as judge at his trial. Their desire to protect Shipp is manifest. They are also evidently endeavoring by their testimony to justify their own actions on the

night of the lynching, and especially their neglect to make any attempt to identify any of the lynchers, even if they did not see fit to attempt to stop the lynching. They testify that about the time the mob entered the jail they were a few blocks from the jail and apprehended that there was a mob for Johnson. For more than half an hour before the mob came out of the jail with Johnson they were in the county court-house, about 125 feet from the jail (1666). They did not go to the jail and endeavor to quiet the mob or to identify the members of the mob (1667, 1670, 1755, 1757); they made no effort to ring the alarm bell on the court-house (1667); there was a telephone in the court-house and they were in communication with the police station but did not make any effort to get the police to go to the jail (1678, 1778); they made no effort to stop the mob when it came out of the jail (1669) nor did they make any effort to go after the mob or to identify them when they came out of the jail (1670, 1678, 1680).

To say that the sheriff and his deputies did not anticipate that a mob would attempt to lynch Johnson on the night of the 19th is to charge them not only with gross neglect of duty, but with an ignorance of conditions in a matter which vitally concerned them all as officers, and is directly contrary to their own testimony. The evidence of the danger was so manifest that anyone in that community with eyes or ears certainly must have known and appreciated it. The casual observer could not mistake it, and it is

ridiculous to say that officers of the law, who had been through the experiences these defendants had passed through the two months prior to the lynching, and who necessarily were in touch with all that was done and said and printed in that community regarding the Johnson case, did not know that a lynching probably would be attempted on the 19th. Under the facts shown to have existed in this case, when the sheriff and his deputies say that they expected a mob on the 20th, they practically concede the allegation of the information that they were informed and had every reason to believe that an attempt would be made on the 19th by a mob to lynch Johnson.

In view of this, Shipp's failure to make the slightest preparation to resist the mob, the absence of all of the deputies, except Gibson, from the jail throughout the mob's proceedings, occupying the period of three hours in the early evening, the action of Shipp in placing himself without resistance in the hands of the mob, and his failure to make any reasonable effort to save Johnson or identify the members of the mob, clearly show a purpose and disposition upon his part to render it easy for the mob to lynch Johnson and to help in the lynching.

It was only an accident—the striking of the lock on the corridor door by a member of the mob so that the key taken from Gibson would not work—that prevented the lynching of Johnson entirely without Shipp's appearance, although he was within a few blocks of the jail. After Shipp was informed that a

mob was at the jail and he could not do otherwise than go there, while attempting to make it appear that he was performing his duty to protect Johnson, he in fact at no time hindered the mob or caused it to be interfered with or helped in the slightest degree to protect Johnson, thereby manifesting not only utter disregard of this court's mandate but also a desire to assist in the defiance of this court's orders.

Between 8.30 and 9 o'clock on the night of the 19th Judge McReynolds, before whom Johnson was tried, and Mr. Whittaker, who prosecuted Johnson, communicated with Sheriff Shipp at his house, saying that there were persons around the jail who looked suspicious and suggesting that the sheriff had better go down to the jail (45, 164, 165, 170, 1654, 1750, 1844, 2159).

At that time a report was generally circulated in the city that a mob was at the jail to lynch Johnson (51, 80).

Shipp lived only a few blocks from the jail (108, 2161).

He reached the jail about 8.45 (80, 81, 362).

He was alone (81, 105, 2160, 2193).

A number of people were in the jail and outside of it when he arrived (80, 171, 2160, 2178).

He anticipated a mob was inside (2191).

Without stopping to speak to any of these people he rushed inside of the jail to the foot of the stairs leading to the floor Johnson was on (81, 171, 2160).

There he was taken hold of by five or six men and carried upstairs (83, 106, 171, 362, 2160).

The men who took hold of him had no firearms (84).

At first he was put in the bathroom and then was released and stood around near the corridor door, where the mob was at work, with three or four unarmed men around him (89).

He made no effort to get away or use force in opposing the mob (89, 362, 363).

He did not attempt to use his pistol or call for help (2189).

After the corridor door had been broken in, either Shipp or defendant Gibson told the mob which cell Johnson was in (90).

When the mob left the jail with Johnson, Shipp did not follow or make any effort to rescue Johnson or get others to help rescue him (92, 1670, 1671, 1780).

He was not locked up when the mob left the jail but was left entirely free (92, 1658, 1756, 2119).

When the crowd following the lynchers was about two blocks from the jail Shipp came out of the building alone and unguarded (179).

To a request made by a man at that time to go and identify members of the mob, Shipp replied that it would be dangerous and foolish. This request was made before the shooting occurred (180).

A special deputy met Shipp at the jail just after Johnson had been taken out and before he was shot. Shipp told him that the mob had Johnson. Shipp

was quiet and did not seem dejected. He made no effort to go after the lynchers (497).

Shipp made no efforts to reach the police or militia or others by telephone or otherwise, although he had a telephone at his house and they all had telephones (81, 378, 2160).

When he reached the jail he could have gone about three blocks to the police station and got the police (2190).

No alarm bell was rung at the court-house that night (81, 189, 1945), although it was rung the night of the attempted lynching, January 25, and it drew out a big crowd (1945).

No attempt was made by Shipp or others to summon a posse (82, 84, 92, 93, 187, 189, 227, 363, 364, 2179, 2188).

He sent no one after deputies (2179, 2190).

He made no effort to send anyone for help (2188).

It is testified that some time after the mob had left the jail for the bridge, Shipp sent Galloway and Clark down to the bridge, but he made no effort to go himself (2117).

There were in the crowd around the jail and at the scene of the lynching a substantial number of law-abiding men of good character (95, 101, 119, 120 193).

The readiness to respond to a call by the sheriff is manifested by the testimony of Ware, a justice of the peace, who states that he went to the jail with the intention of assisting the sheriff if he needed assistance (410).

That assistance in suppressing the mob might have been easily obtained if effort had been made is shown by the testimony of the chairman of the board of safety, who testifies that at the time of the first lynching in going 4 or 5 blocks to the jail he gathered about 16 men to help put down the mob (379).

The militia was drilling on the night of the 19th between 8 and 10.30 in the armory, a well-known place, 3 blocks from the jail. It was not called upon to assist in suppressing the mob, although it had been called out twice before by the governor and would have responded to a call by the sheriff (151–153, 158).

The governor had given assurances that any help asked for would be given (1800).

Numerous witnesses testify that no firearms were displayed by the mob except that one of their number was in the office of the jail with a Winchester rifle, and one pistol was exhibited to a reporter when the door was being broken open (20, 21, 411, 1669, 1776).

No deputies put in an appearance while the mob was at the jail or during the lynching except Frank Jones, who approached the jail with a prisoner, but upon seeing the mob immediately left with the prisoner, and excepting Mat Galloway who was seen in the crowd (86) (see below, pp. 40, 41).

From the time he reached there, about 6 o'clock, until the mob came, Gibson was the only officer in the jail (1968, 1973, 1999).

Heavy iron chains were sometimes used as additional guards upon circular doors in the jail, such as that leading to Johnson's corridor (452, 453, 1995, 1996, 2014, 2015). These were locked by the prisoners on the inside (2014). During the trial of Johnson these chains were used on the circular doors (2013). But none were on the circular door leading to Johnson's cell on the 19th (90). It also appears that Johnson's cell door was not locked (20, 91, 92).

Winchester rifles which were kept to defend the jail against mob violence were, at the time the mob attacked the jail on the 19th, in a show case in the office (unbarred part). These were taken out of the show case by the mob and unloaded (82, 83).

Although Shipp was in the midst or near the members of the mob for about an hour when they were in the jail, he made no efforts to obtain information so that he could identify any of them, and he testifies that he does not know any member of the mob (2184).

Only one conclusion can be drawn from these facts, all of which are clearly established by the evidence—Shipp not only made the work of the mob easy, but aided and abetted it.

JEREMIAH GIBSON.

Gibson, like Shipp, must have known that a mob would attempt to enter the jail and lynch Johnson on the 19th. About 6.15 in the evening of the 19th Brown, the day jailer, left the jail, transferring the keys of the jail to defendant Gibson, the night jailer.

Although he was at the jail for more than two hours before the mob arrived and was in charge of it, Gibson made absolutely no effort to summon assistance for resisting the mob or to prepare in any way to meet its attack. He also knew that unless he summoned assistance he alone would have to defend the jail against the mob and that he at best could offer only slight resistance. His neglect in this respect in itself is sufficient to sustain the charge that he aided and abetted the mob. There is, however, other convincing evidence upon this point. Soon after arriving at the jail Gibson told Mrs. Baker, a white woman and prisoner confined on the same floor with Johnson, that a mob was coming and directed her to go to her room (125, 126). When the mob was at the jail Gibson came to Mrs. Baker's door and told her that no one would hurt her (127). Gibson verifies this last statement (2064); although Gibson denied having made the first statement attributed to him by Mrs. Baker, she appears to have been a truthful witness.

Gibson himself testifies that when he heard the mob he went into the hospital cell, which was located on the top floor of the jail, and as soon as the mob got upstairs they came to him and without resistance he handed over to them his pistol and the keys, among which was a key to the door of Johnson's cell (2003, 2021); that he did not try to use the pistol at all or to resist the demands of the mob by force (2020); that from the top floor, where he was when the mob came, he could have gone to the kitchen and from there out of a door into the yard and back of the

jail (2017, 2018); that he made no effort to go out this way, although it took the mob about ten minutes after he knew they were there to break through the door between the outer office and the jail proper (2018–2020); that there are windows on the top floor out of which he might have called for help (2097); that he just gave up and made no effort at all to resist the mob or summon help (2021, 2022); that he made no efforts to go after the mob and rescue Johnson after they had left the jail, although he was left perfectly free when they went away (1671, 2030); that although the men were pretty bold in their work when he was near them he failed to recognize any excepting Nick Nolan (2028).

Comment upon these facts is unnecessary, and in view of them the complicity of Gibson with the mob can not be questioned.

MAT GALLOWAY.

Galloway was a deputy sheriff from the time that the crime was committed until after the lynching, and must be charged with knowledge of the impending lynching for the same reasons that Sheriff Shipp must be charged with such knowledge. Although aware of the fact that there probably would be an attack upon the jail and an effort to lynch Johnson, if we believe Galloway's testimony, he not only made no efforts to protect the jail or hinder or obstruct the mob, but remained away from the jail and the mob until after Johnson had been taken to the bridge and only appeared upon the scene after Johnson was dead.

There is, however, testimony to the effect that Galloway was present at the jail before Johnson was taken from it, and proceeded to the bridge, where the lynching occurred, directly behind the mob.

Fred Smith, a colored witness, whose testimony has the appearance of being truthful and fair, testified that he was standing outside the jail when the mob was at work in the jail, and that at about 9.30 o'clock he saw Galloway coming from the direction of Seventh street along Walnut street on the side upon which the jail is located, and pass into the crowd, but did not see him after that. He says that he has known Galloway for three or four years (225, 226). Galloway made no efforts to summon a posse or get assistance to resist the mob (227). A rigid cross-examination of Smith failed to disclose any discrepancies in his testimony.

Henry A. Lee, a colored witness, and his wife testified that when the mob was on its way from the jail they saw Galloway among the crowd following the mob which had Johnson, and that he had either a gun or a stick in his hand (1180, 1181, 1213).

Because of the testimony as to the reputation of Lee and his wife, their statements perhaps should not be given much weight, if it were not for the fact that the testimony of some other reliable witnesses tends to corroborate their statements.

Ware, a justice of the peace, whose testimony is absolutely reliable, testified that directly after the lynching he saw Galloway on the bridge where the lynching occurred, and that he had a Winchester rifle

in his hand (419, 420, 423). A reliable witness also testified that he saw a man of Galloway's stature carrying a Winchester rifle in and around the jail when the mob was at work there (186, 191, 1509).

Galloway was a large man and had the reputation of being rough and violent (1509, 1511, 1537).

CASES AGAINST MEMBERS OF THE MOB.

It was extremely difficult to obtain direct and positive evidence of participation by individuals other than officers in the conspiracy and lynching. This is undoubtedly due to the feeling in the community, and to the reluctance of nearly all who were present as spectators to subject others to punishment. All of the defendants charged with being members of the mob, with the single exception of Williams, have set up alibis and introduced considerable testimony in support of them. There is, however, some convincing proof that the defendants took an active part in the conspiracy and lynching. The lynchers are described generally as "mechanics or men of that class" (366), and all of the defendants except Shipp and Gibson come within this description.

NICK NOLAN.

Nolan was a saloon keeper at the time of the lynching (968).

Ware, a justice of the peace, whose testimony as stated above, stands unimpeached and is fair and reliable in every respect, testified that he saw Nolan put the noose around Johnson's neck at the bridge (415, 417). He also testified that he saw Nolan hit

Prichard, a newspaper reporter, who was standing close to the mob around Johnson (426). The effort to refute this by testimony of Prichard (1281–1283) is palpably without avail. Prichard says that he could not see and does not know who hit him (1283). Effort was also made to refute the statement of Ware by the statement of Chivington, a newspaper reporter, who testified that he saw the man who hit Prichard and that it was not Nolan, and that he did not see Nolan there that night. Chivington, however, testified that Nolan might have been one of the masked men; that it was light where Prichard was struck, and that Ware was right up among the lynchers at the bridge (911, 913, 916, 917).

Nolan also introduced testimony of Pemberton, a deputy circuit court clerk of Hamilton County, who said that he saw one man hit another and the man who struck the blow was not Nolan, whom he said he had spoken to only once in his life. He said, however, that he was 20 feet away from the place where the man was struck, and that the man who struck the blow had his back toward him. Although Prichard was a good friend of his and he had known him for years Pemberton says he did not recognize him as the man who was struck (919, 920, 931, 932). He also says that he did not recognize a number of other close friends who were there (932, 933). It also appears that he is nearsighted and he says he did not see any crowd around the jail about 10 o'clock, when he passed into it. (921, 922, 933). These facts and the very apparent

bias of the witness deprive his testimony of any substantial weight and certainly it does not outweigh the very positive testimony of Ware.

Gibson, the night jailer, testified that one of the men in the mob, who had a mask over his face, was Nick Nolan; that he had known Nolan for a year or two and that Nolan had talked to him and waited upon him at Nolan's bar (2023, 2024, 2059, 2060).

Gibson also testified that he heard members of the mob use the name "Nick" (2052, 2058).

It is apparent that Gibson was an unwilling witness in giving this testimony, and for this reason says that he is not entirely positive as to his recognition of defendant Nolan, but we think that no other conclusion can fairly be drawn from his statements than that he saw Nolan in the mob.

Joe Franklin, a colored witness, says that he saw Nolan in the mob that took Johnson out of the jail (521, 522). Effort was made by the defendant to show through Pemberton that Franklin was not on the court-house steps, where he said he was when the mob came out of the jail, but Pemberton's testimony upon this point is of little or no value, for in addition to the fact that he was near-sighted and failed to recognize many of his friends that night, he says that he was running and kept his eyes on the steps in going down them in order to keep from falling; that the light was in his eyes, and that he was intent upon catching up with the crowd (925–928).

The evidence above referred to is convincing that Nolan was among the lynching party, and the testi-

mony introduced in his behalf falls far short from overcoming the very positive evidence against him. Nolan claims to have been in his saloon from 7 to 9.30 on the evening of the 19th. His only supporting testimony as to this is that of his bartender, who, upon cross-examination, stated that he had no recollection of Nolan's being at the saloon on the 19th, and of his porter who worked in the saloon. From 9.30 to 10 o'clock Nolan claims to have been in his brother's saloon. The only corroborating evidence as to this is that of his brother and a man who was in his brother's saloon drinking with him. Neither of these men nor the porter knew that Nolan was accused until two months after the lynching, and the cross-examination shows that they might well be mistaken as to the night.

LUTHER WILLIAMS.

Williams was a saloon keeper (1183).

Ware, justice of the peace, whose testimony has been heretofore referred to, says that he saw Williams shoot Johnson and that he was about 22 feet away from Williams at the time; that he saw Williams shoot five times. He also says that he had known Williams for several years and that they belong to the same lodge (417, 711).

Prichard's testimony, which apparently conflicts with this very positive testimony of Ware, is of little value because of Prichard's dazed condition at the time of the shooting, Prichard a few minutes before having been knocked down by a severe blow. It is

possible that Prichard's testimony refers to some other man who may have fired (1285–1290).

Lyon, a colored witness, also testified that he saw Williams in the crowd where Johnson was shot or hanged and that he had known Williams for some years (334).

Williams claims to have been in his own saloon until about 9.30, when he closed it and went to the jail; he says that he went upstairs in the jail and stayed there for a few minutes and came out just before Johnson was brought out and that he went to the bridge and saw Johnson lynched, but denies that he participated in the acts of the mob (1184–1188). His only supporting testimony related to his general reputation, most of which was upon cross-examination shown to be valueless. The testimony showed that Williams had been arrested several times for fighting and gaming and that previous to the lynching he had killed a negro (1162, 1202, 1203).

These character witnesses, although saying Williams's reputation was good, also testified as follows:

T. G. Newman (1263–1270): Witness never associated with Williams. Has seen him only with saloon keepers and bartenders. Never heard Williams's character discussed. Never heard anything about him one way or the other. Williams has been arrested for gaming.

B. A. Close (1174–1183): Williams is a customer of his. Is not one of his associates. Does not know what Williams does outside of business hours or who his associates are.

Edward G. Spencer (1168–1174): Witness is a saloon keeper. Williams's associates are mostly saloon keepers.

C. W. Cox (1163–1168): Witness is in wholesale whisky business and Williams is a customer of his. Drinking men and liquor sellers are Williams's associates largely. Never heard any of Williams's associates speak about him.

Samuel A. Conner (1156–1163): Witness was formerly a saloon keeper and bartender. He does not know what people generally think about Nolan.

J. O. Martin (1152–1156): Witness is in wholesale whisky business and Williams is a customer of his and pays him well. He does not know who Williams's associates were. Never heard him talked about one way or the other and does not know what others think about him.

Solomon Geismar (1147–1152): Witness does not associate with Williams and never heard anyone talk about him one way or the other.

BART JUSTICE.

Justice is a molder (720).

It will be remembered that Justice was active in the first attempt to lynch Johnson on January 25 and was on the committee which went through the jail.

William Tarpley (colored), a prisoner, testified that he heard Justice call from the top of the stairs to the men below to come up (345).

Joe Franklin (colored) testified that he saw the mob bring Johnson out of the jail and heard Justice

holler "By God! we have got him, boys; clear the way out." That he was familiar with Justice's voice and knew it was his (517).

Testimony was introduced by Justice tending to show that Franklin was not at the place he stated he was when Johnson was being taken from the jail (919) but Franklin's testimony is corroborated by that of J. A. Walters, whose veracity is unquestioned (2246–2247).

Ware, whose testimony has been previously referred to, says that he did not see Justice come out of the jail with Johnson nor did he see him at the lynching (707). While we think Ware intended to be fair and truthful in all that he testified to, his statement in respect to Justice is only of a negative character and it might well be that Justice was there although Ware did not recognize him, as there were a number of men in the mob who wore masks over their faces.

While the description of Justice, as given by himself (763, 764), does not correspond exactly with that given by others of the leader of the mob and the man who used the sledge in breaking down the door to Johnson's compartment, and there appears to be some confusion as to whether the leader was the same man as the one who used the sledge most of the time, there are points in the description of that party given by others which suggest the idea that it was Justice (88, 118, 119, 366, 372, 375).

Justice claims to have been at the house of a friend, James F. James, from 7 to 10.20 o'clock on

the night of the 19th and supports his alibi with the testimony of his wife and daughter, of James, and of Frye, a man living next to James.

The testimony of Frye is valueless. The strongest interpretation that can be put upon it is that he knew Justice was at James's house at 7 o'clock and that he heard him say good-night some time after 9 o'clock, but how long after he can not say (731–733).

HENRY PADGETT AND WILLIAM MAY.

Padgett and May are carpenters (874, 875).

Stonecipher testifies that at about 4.30 on the afternoon of the 19th he met Padgett and May.

> A. Mr. Padgett asked me if I had heard what the Supreme Court had done in the Johnson case. I told him I had understood that they had stayed the execution. He said, yes, that is what he had understood, and it was a damn outrage.
>
> * * * * *
>
> A. Then they said they had no business interfering with our business at all.
>
> * * * * *
>
> A. That is about all that Padgett said. Then May said, we will see to that ourselves.
>
> Q. Go ahead; was that in Padgett's presence?
>
> A. Yes, sir; they were both together (263, 264).

Stonecipher testifies that the morning after the lynching he met Padgett inside of Ransom's saloon:

> A. I went in and Padgett had the morning Times and the first word he said, he said: "This damn paper has printed a lie about this

lynching." I said: "How do you know it's a lie, Henry?"

Q. What did he answer?

A. Well, he told me he was there.

* * * * *

Q. Was anything further said between you at that time?

A. Henry says, "We did the nigger up all right, didn't we?" Alf says, "You bet we did." That was all that was said (267, 268).

Stonecipher also testified that the same morning he saw May in front of the Stag Hotel:

Q. Did you have a conference with him?

A. Yes, sir; he had the left side of his nose skinned up pretty bad, and I says: "Hello, Bill, what is the matter with your nose?" He says: "I skinned it last night breaking that damn jail door down and getting that nigger out" (268).

An attempt was made to prove that Stonecipher's reputation for truth and veracity was bad. Many of the persons who undertook to testify against Stonecipher in this regard were clearly disqualified because of their lack of familiarity with his reputation. The animus and foundation for this attack upon Stonecipher's reputation are well stated by Mr. Rider, a witness introduced by defendants. He testified on cross-examination:

Q. When did it get to be bad; since this suit came up and since he has been a witness?

A. All I have heard about it has been since the suit came up.

Q. Since the suit came up, and since he testified in the case against a lot of defendants, he has been getting a bad reputation?

A. No.

Q. You did not know anything about it, or never heard of his bad reputation before this suit came up, did you?

A. No, sir.

Q. How many years have you known him?

A. Ten or twelve years. He has worked for me.

Q. He had a perfectly good reputation until the time the suit came up?

A. I never heard anything against it until that time (1124, 1125).

Q. There is a good deal of feeling against Stonecipher, is there not, on account of his testimony?

A. I think there is (1128).

No motive for Stonecipher's testifying falsely is shown. His story is entirely reasonable. He had known and worked with Padgett and May for several years and knew them well (265, 271, 875).

Padgett and May were friends (880, 892, 1043). Padgett and May both testified that May went to Padgett's house in the morning of the 19th and they went together to a saloon, where they stayed all the afternoon, drinking considerably, and left the saloon together about 5 o'clock in the evening (871, 872, 876, 878, 880, 1039, 1044).

Padgett, while he denied having any conversation with Stonecipher on the 20th relative to the lynching (1038), says that he saw Stonecipher and Dobbs at the

Stag saloon on the morning of the 20th (1051), and Dobbs, whose veracity is unquestioned, testified that Padgett spoke to Stonecipher on the 20th about the lynching (492–495).

Although May denies the conversation testified to by Stonecipher as having taken place the morning after the lynching, and claims that his nose was skinned by falling on his steps when he went home drunk about 6 o'clock on the 19th (872), it is peculiar that this wound, which was described by May and his wife as being only a small scratch (889, 904), should have made such a distinct impression upon both May and his wife (903, 904). May denies seeing Padgett at all on the 20th (884, 892), but Dobbs swears that he saw them together (492–495). May admits that he passed Stonecipher in front of the Stag saloon where Stonecipher testifies the conversation took place on the morning of the 20th, but denies having the alleged conversation (891, 893–896).

Greater weight must be given Stonecipher's testimony, strongly corroborated as it is by Dobbs's testimony, than is given the denials of the defendants. Dobbs's statements stand absolutely unquestioned by defendants, and being in sharp conflict with the testimony of the defendants in several respects, clearly shows that they have not told the truth.

Both Padgett and May set up alibis. Padgett claims to have been in the pool room of the Stag saloon from about 6 until 10 on the night of the 19th. His testimony to that effect is supported by the statements of four men who claim to have been in

that pool room during those hours. There are some very noticeable discrepancies in the testimony of these men, and the circumstances that they relate are so peculiar as to cast grave doubt upon their stories.

Chambers says that he was in the Stag pool room all the time from 6 to 10 on the evening of the 19th; that Padgett left the pool room with him, McJunkin and Gray, about 10 o'clock and that they left Padgett on the street in front of the saloon (979–981); that Padgett did nothing but sit around in the pool room while he was there (979, 988, 990); that he goes to that pool room about every Saturday night (984, 985), but this was the first time he had seen McJunkin in there in a good while and that McJunkin is not in the crowd that usually goes around there (991); also that he has never seen McJunkin there since (992).

McJunkin testifies that he saw Padgett in that pool room from 8.30 until they left about 10.45 o'clock (996); that was the first time that he had played pool with Chambers and that he plays there once or twice a week (997). He says that Padgett was around the table putting up balls for the players, etc. (996, 1001).

Gray testifies that he went into the Stag pool room at 8 o'clock and came away about 10; that Padgett was there while he was and that Padgett was sitting around all the time he was there (1011); that he and McJunkin go to that pool room Saturday nights (1007) and that this was the second time he had seen Chambers there (1007).

Duckworth swears that although he was at the Stag pool room that night and saw Padgett there he

himself was never there before; he does not go there often and does not remember being there since (1026). He also says that Padgett was asleep in a chair while he was there and did not take any interest in the game or set up the balls (1018, 1023).

Padgett himself swears that he was in the pool room part of the time and the bar adjoining the pool room part of the time; that he sat around some and set up the balls (1040); that Saturday night is usually the night that men get together at the Stag (1046).

It is a most peculiar coincidence that all of these men, one of whom had never been in that pool room before and has not been there since, and the others, who, in so far as they were accustomed to go there, went on Saturday nights, should have congregated at this place on Monday night, the night of the lynching. It does not sound reasonable, and the discrepancies in their testimony are sufficient to cast the gravest doubts upon the truthfulness of their stories, especially as they all say there was nothing in particular which fastened the incident and date upon their minds.

May claims to have gone home and gone to bed after he left Padgett, about 5.30 in the evening (872–887). His only supporting testimony is that of his wife. His house was only five blocks from the jail and four blocks from the bridge (897).

We submit that the alibis have not been established by any evidence worthy of belief, and that Stonecipher's testimony, corroborated by that of a

wholly disinterested party, Dobbs, is sufficient to show participation of Padgett and May in the conspiracy and lynching.

FRANK WARD.

Ward is a bricklayer (1095).

Stonecipher testifies that on the afternoon of the 19th, about 5 o'clock, he saw Ward in front of Mullery's saloon.

> A. I stopped on the curb, waiting for a car to go home and Ward called to me; he says: "Ain't you from Georgia?" I says: "I used to live there."
>
> Q. What is that?
>
> A. I stopped on the curb and Ward came out of the saloon; he hollored to me and called me by name and says: "Ain't you from Georgia?" I says: "Yes; I used to live in Georgia, mighty near raised there." He says: "We want you to help us lynch that damn nigger to-night."
>
> Q. What was that?
>
> A. He says: "We want you to help us lynch that damn nigger to-night."
>
> Q. What did you say?
>
> A. I says: "I don't believe it would pay. I believe Sheriff Shipp would shoot the red hot stuff out of you."
>
> Q. What did he say?
>
> A. He says "No; it is all agreed. There won't be a sheriff nor a deputy there." I said "Ward, I believe you are lying." That is just what I told him (265).

Stonecipher also testifies that he saw Ward in front of Price's saloon on the evening of the 20th. Ward said:

> "You are the first damn man from Georgia ever I saw that did not have nerve enough to kill a nigger" (268).

Stonecipher testifies that he had known Ward for several years and that they had boarded at the same place for several months (266). Ward denies knowing him at all (1091), but it appears that in the winter of 1903 they had adjoining rooms, heated by one stove in Stonecipher's room, in a boarding house, and ate at the same table (2215, 2222, 2225, 2227).

Ward claims to have been in and around Barnes's saloon throughout the lynching. He supports his alibi with the testimony of Barnes, Prince, Ward's wife, and Spradley, a man who worked in a restaurant two doors from Barnes's. The substance of the testimony is that Ward was too drunk to have participated in the lynching. Ward lived over Barnes's saloon (1062, 1077). Barnes says that all he knows is that Ward was in his saloon about 7 o'clock on the 19th and once or twice after that (but that he can not say at what time) and that he saw Ward when he closed about 10 o'clock (1074). The barkeeper, Prince, testifies that the last he saw of Ward was when he (Prince) left the barroom for the night at 8.20 (1078). It would take only five minutes to go from Barnes's saloon to the jail (1073, 1074.)

Ward gets drunk often and is violent and dangerous when drunk (1083–1085, 1068, 1074, 1075, 2044).

From the testimony it appears that Ward was drinking heavily all day on the 19th (1070, 1084, 1078, 1100). It also appears that Barnes's saloon, in and around which he was all day, was only three or four blocks from Mullery's, where Stonecipher says the conversation of the 19th occurred (1103). Ward testified that he did not know whom he might have talked to on the 19th. Although Ward denies the conversations with Stonecipher, his condition was such that his statements are unreliable, and Stonecipher appears to have told the truth.

INTENT.

The information alleges that the acts of the defendants were done with intent to show their contempt and utter disregard for the order of this court, and in order to prevent this court from hearing the appeal of Johnson. In the opinion of Mr. Justice Holmes, delivered upon the hearing of the preliminary questions of law, it was said:

> If the presence and acts should be proven, there would be little room for the disavowal of intent. * * * It may be found that what created the mob and led to the crime was the unwillingness of its members to submit to the delay required for the appeal. From that to the intent to prevent that delay and the hearing of the appeal is a short step.

Intent is best proved, and in many cases can only be proved, by acts. If the acts with which defendants are charged have been proven, it needs no argu-

ment to demonstrate that defendants intended to prevent this court hearing Johnson's appeal and to delay its mandate. It has already been shown that the reason for the mob's action was fear of the law's delay and the unwillingness of the sheriff, his deputies, and the members of the mob to submit to it. The intent to commit a contempt of this court was necessarily present in the acts of defendants.

This proceeding is unique in the history of courts.

Its importance can not be overestimated. Lynchings have occurred in defiance of state laws and state courts without attempt, or at most with only desultory attempt, to punish the lynchers. Perpetrators of such crimes have heretofore been censured only by public opinion; courts have remained silent. Powerful as such opinion always is, severe as it has been in its rebuke of such deeds, it has been inadequate to check these outbreaks of lawlessness. Only recently lynchings became so numerous that the whole country was aroused to earnest discussion of mob violence and a remedy for it. It is indeed useless to seek relief unless the judiciary can punish those who snatch and kill the men it has imprisoned. The arm of justice fetters men for years. It strikes death to the murderer. It can take property and life. Must it confess it is too weak to protect those whom it has confined? The arm can destroy. Can it not protect? If the life of one whom the law has taken

into its custody is at the mercy of a mob the administration of justice becomes a mockery.

When this court granted a stay of execution upon application of Johnson, it became its duty to protect him until his case should be disposed of. It matters not with what crime he was charged. It is immaterial what the evidence was at the trial. Sentenced to death, Johnson came into this court alleging that his constitutional rights had been invaded in the trial of his case, and upon this the Supreme Court said he had a right to be, and would be, heard. From that moment until his case should be decided, he was under the protection of this court. And when its mandate, issued for his protection, is defied, punishment of those guilty of such contempt must be certain and severe.

Never in its history has an order of this court been disobeyed with impunity. A few attempts to disregard its decrees have been made, but always without ultimate avail. In 1779 the Continental Congress, through its Standing Committee of Appeals in Cases of Capture, reversed the judgment of the Court of Admirality of the State of Pennsylvania and made an award in favor of Olmstead, a claimant, in a prize case. The State resisted enforcement of the decree and Congress yielded. Olmstead thus found the decision of the appellate tribunal in his favor useless to him. With the adoption of the Constitution the jurisdiction of appeals formerly exercised by the Continental Congress became vested in this court and in 1808 Olmstead sought redress here in the same

matter. (*United States* v. *Peters*, 5 Cranch, 115.) In one of his powerful opinions the great Chief Justice made it clear that the court's decrees in favor of Olmstead must be obeyed. Nevertheless the State for a time defied the order. This resistance, however, was unable to withstand the unswerving determination of this court and finally disappeared. Members and officers of the state militia who had interfered with execution of the decrees were tried and sentenced to fine and imprisonment. This court then declared and established a supremacy which has ever since been maintained and which will always be a priceless heritage to the American people.

In the controversy between the State of Georgia and the Cherokee Indians, which came before this court in *Worcester* v. *Georgia*, 6 Pet., 515, the State refused to release a prisoner in obedience to a direction of this court. Although the National Executive declined to aid in requiring obedience, after some months the State withdrew opposition and again the supremacy of this court was recognized.

In the history of the case of *Ableman* v. *Booth*, 21 Howard 506, we for a third time find evidence of a State arraying itself against this court. Officers and courts of the State of Wisconsin, contrary to the decision of this court, insisted that the fugitive-slave law was unconstitutional, and resisted its enforcement. But the outcome was the same. Finality of decisions of the Supreme Court of the United States was declared, and obedience to its order was compelled.

It is not surprising that in the early history of this country, when the jurisdictions of the Federal and the State Governments were not clearly defined or well understood, States should have resisted the orders of this court. But it is remarkable that individuals should now undertake to defy the mandate of this great tribunal.

Justice is at an end when orders of the highest and most powerful court in the land are set at naught. Obedience to its mandates is essential to our institutions. Contempts such as this strike down the supremacy of law and order and undermine the foundations of our Government. Recurrence of such acts must be prevented. The commission of the offense has been established, and punishment should be imposed in accordance with its gravity.

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Special Assistant to the Attorney-General.

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No. 5, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP ET AL.

MEMORANDUM UPON COMPLAINANT'S EVIDENCE OBJECTED TO BY DEFENDANTS.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant, *v.* JOHN F. SHIPP ET AL. } No. 5, Original.

MEMORANDUM UPON COMPLAINANT'S EVIDENCE OBJECTED TO BY DEFENDANTS.

The principal objection made by defendants to evidence offered by complainant referred to newspaper articles published in the Chattanooga *Times* and Chattanooga *News*, morning and evening papers, respectively, of large circulation in the community. The earliest publication of any of these articles which were circulated before the lynching was on March 11. One of the principal points of inquiry in this proceeding has been the state of public mind at the time of and immediately preceding the lynching. Complainant contends that it was such and had so manifested itself as to give the sheriff and his deputies every reason to believe that a mob would attack the jail on the night of March 19. Defendant combatted this position and asserted that public feeling against Johnson had subsided and that there was no reason

73998—09

to apprehend an attack upon the jail. These articles therefore become important as showing the information which the public had relative to the habeas corpus proceedings in the Johnson case, as showing the manner in which Johnson's crime was again brought to public attention and publicly agitated, as showing the interest the public took in the proceedings, and as being in themselves an expression of the public anxiety as to the outcome of the proceedings and as to the safety of Johnson. One can not read them without feeling that they were a distinct warning to the sheriff and his subordinates that there was danger of mob violence.

One of the best ways of ascertaining the conditions in the community and the public feeling is by considering what was publicly done and said in the community immediately before the lynching. We do not think it essential to the admissibility of these articles to show that defendants had knowledge of them; but if so, there is a presumption that Captain Shipp and his subordinates knew about them, for aside from the fact that as members of the community they must have been informed as to what was contained in the local papers, they as officers of the law, guarding the life of a man who had been threatened with lynching, must have been alert to keep informed upon the state of public feeling, and especially whatever was published and circulated in that community. It was a part of their official duties. The articles here referred to are found on pages 27–33, 34–38, 39–43, 57–61, 312, marginal paging.

The first article referred to was published in the Chattanooga *Times* of March 11, and among other things told about Captain Shipp taking Johnson from Knoxville back to Chattanooga and placing him in the jail; about the great interest manifested in Johnson's trial in Knoxville; about the denial of petition for a writ of habeas corpus by Judge Clark and his order placing Johnson in the custody of Sheriff Shipp, to remain there for ten days pending application for an appeal to the United States Supreme Court, and stating that the execution of Johnson would not take place before March 23. This article also contains reference to what are termed "the dramatic incidents" of Johnson's trial.

The next article was published in the Chattanooga *Times* of March 18, and among other things refers to the increasing interest in Johnson as the day of his doom approaches and the increased number of people visiting the jail with a desire to see him.

The next publication is that contained in the *Times* of March 19, which states that Justice Harlan has allowed an appeal; that the time of Johnson's execution now remains uncertain, etc. Any objection which defendants might have to the admission of this article was waived by their bringing out the fact of its publication and the information it contained in the testimony of their own witness, Judge McReynolds (p. 1745).

The fact of the publication in the *News* of March 19 of information relative to the allowance of appeal and granting of stay by the United States Supreme

Court in the Johnson case was admitted by stipulation. In so far as that article was introduced for the purpose of proving the publication of that information, defendants therefore could not object to it. We think also that it is admissible for the purpose of showing the manner in which this news was made public and the information the public had as to the effect of the action of the Supreme Court in respect to delays in the execution of Johnson.

An editorial contained in the same edition of the *News* commenting upon the action of the Supreme Court was also introduced (p. 312). This is admissible not only as an expression of public opinion, but as a thing which in itself tends strongly to create a public opinion. The closing paragraph of that article was a sharp and public warning that the community was aggravated by the granting of the stay and consequent delay in the execution of Johnson and that mob violence was imminent.

Defendants objected to the introduction of a newspaper article reported by John T. Evans and published by the Birmingham *Age-Herald* May 28, 1906, containing statements made by Captain Shipp to the reporter relative to the lynching (pp. 167–174). As the reporter testified to certain statements contained in this article from his own recollection, the objection to the article in so far as it relates to those statements is of little importance. Statements here referred to are to the effect that Captain Shipp did not make any efforts to hurt any member of the mob; that the proceedings in the Supreme Court were a matter of

politics, and that the first information relative to an attack upon the jail which Sheriff Shipp got was from the Chattanooga *Times* over the telephone, and that the lynching was caused by delays of the law (pp. 162–166). The greater part of this interview was subsequently admitted without objection upon the part of defendants' counsel (pp. 319a–319b). The foundation for the introduction of the article at this subsequent time was quite different from that when it was first introduced. J. T. Barnes testified (pp. 317–318) that he submitted the article to Captain Shipp and that Captain Shipp thought it was accurate except in one particular. This clearly made the article admissible, and, as previously stated, no objection was made to its admission when offered in this way. So any objection which was made to the article as first introduced was waived. But that this article gives a correct report of what Captain Shipp said is testified to in positive terms by the reporter, Mr. Evans. It was therefore admissible under the doctrine of *Insurance Company* v. *Weides* (14 Wall., 375) and *Insurance Co.* v. *Weide* (9 Wall., 677).

Defendants objected to the article published in the Chattanooga *Times* of February 10, 1906, over the name of Mr. Thomas, one of the attorneys who defended Johnson (pp. 2166–2170). The fact of the publication of this article was testified to by Mr. Whittaker (p. 1678) and Mr. Boswell (p. 1705). This statement sets forth the reasons why Johnson's attorney deemed it inadvisable to appeal to the supreme court of the State of Tennessee from the judgment

convicting him. It was circulated in the community and Sheriff Shipp testifies that he read it. It was admissible, if for no other reason, because it contained a public warning to Sheriff Shipp and his deputies that in case any appeal should be taken in Johnson's case or any attempt made to have the case reviewed mob violence would surely follow.

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Special Assistant to the Attorney-General.

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OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP ET AL.

MEMORANDUM FOR THE UNITED STATES UPON EXCLUSION OF EVIDENCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant, v. JOHN F. SHIPP ET AL. } No. 5. Original.

MEMORANDUM FOR THE UNITED STATES UPON EXCLUSION OF EVIDENCE.

I.

Some Important Evidence which is Incompetent and Prejudicial.

Some of the evidence introduced by defendants is so clearly irrelevant to the issues of this case and is so prejudicial to a fair consideration of the merits that it should be excluded without question. It needs no argument to demonstrate the incompetency of the following evidence, all of which was objected to by complainant's attorney:

I. EVIDENCE RELATING TO GUILT OR INNOCENCE OF JOHNSON.

Defendant Shipp testified that when in Nashville on January 26, the day after Johnson's arrest, at his request the young lady who was raped and her brother

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came there to see if she could identify the prisoner as the one who committed the crime. He says that he met the lady and her brother at the station and had supper with them. He continued his testimony as follows:

> I said to Miss Taylor, "I am going to take you over to the county jail, where I have two prisoners. I want you to see them both and see whether you can identify either of them."
>
> After we had gotten our supper we got in a carriage with the sheriff and drove to the county jail. On the way to the jail I said to Miss Taylor, "What is there that you can remember about the man that assaulted you by which you can identify him?"
>
> * * * * *
>
> I went on then to describe the man, stating that he was a colored man, a little taller than she was; that he was dressed in a dark suit of clothes, and had on an old soft black hat, and that the coat was cut round cornered. That filled the description of Johnson. Then she remarked, of her own volition, that he had a very soft kind voice—so much so that she was surprised that one with a voice like that would have been guilty of such a crime. If she had talked to the man a thousand times she could not have described his voice any more correctly.
>
> * * * * *
>
> That was so characteristic of his voice and his voice was so peculiar that it had been re-

marked by others who had talked with him on the way to Nashville.

* * * * *

When we arrived at the jail, I, with the sheriff, carried Miss Taylor and her brother into the sheriff's office. Miss Taylor and her brother were seated, and I notified them that I would retire and bring in these two prisoners; but before bringing them in, notwithstanding that we had an electric light, I had the gas lighted that we might have a good strong light.

After bringing the two prisoners in and standing them before her, and leading them in conversation, I passed them out of the room, and then returned and said to Miss Taylor, "Which of these men, if either, is the man who assaulted you?"

* * * * *

She said, "The man that stood to your left." That was Johnson. Then she remarked, "I never expected that you would be able to bring anyone before me who I could identify with so much satisfaction to myself."

* * * * *

I then passed Miss Taylor and her brother out of the room and I brought in Wyatt first into the room in the presence of the sheriff and myself, and we had some talk with him, and then returned him to the officers in the hall and brought in Johnson. I then confronted Johnson with the strap that I had in my pocket, that I had picked up on the ground at the spot

where this young woman was assaulted, and stated to him that the young lady had identified him as the guilty man.

* * * * *

We then passed Johnson back to the officers in the hall. Johnson took from his finger a large ring and handed it to one of the officers and said to him, "They say I am the guilty man, and I want you to send this ring to my people." I will not be sure whether he said to his people or his mother, but to some of his people.

We then left the jail and went to the hotel and remained there during the night. Before leaving I instructed the sheriff to hold these two men, keeping them separated, for further orders.

The next morning I returned with Miss Taylor and her brother to Chattanooga. (2143–2147.)

Samuel T. Dewees, a witness for defendants, testified, over objection by complainant, as follows:

Q. I will ask you whether or not there was a settled conviction on the part of the law-abiding element in Chattanooga, both at the time he was tried and afterwards, and at the time of the lynching, that this defendant was guilty?

A. Yes, sir. (1942.)

II. EVIDENCE AS TO MARKS OF THE CRIME UPON THE LADY.

Rev. J. W. Bachman testified that he went to the home of the lady who was raped the day after the

crime and saw her and her family. He testified as follows:

> Q. State whether or not, when you went there, the marks of the assault were upon the person of this girl.
>
> * * * * *
>
> Q. You may answer the question, Doctor. I asked you whether or not, when you went there, you saw the girl?
>
> A. Yes, sir; I saw the girl.
>
> Q. I will ask you whether the marks of the assault were still upon her person?
>
> * * * * *
>
> A. Well, I went to see the family. I had been with the family some time before, and I went just to have some condolence with them, as I felt was my duty as a minister. The old gentleman brought in his daughter, and a red mark was around her neck, and he said to me: "Brother Bachman, this thing has put me back in civilization a thousand years." He said: "I am a savage." I stayed with them a while and talked with them as best I could and tried to comfort them, and then left. (1807, 1808.)

III. TESTIMONY INTRODUCED TO SHOW THAT JOHNSON HAD A FAIR TRIAL.

M. N. Whittaker, who prosecuted Johnson, testified that before the trial he had an interview with defendant Shipp in the presence of attorneys for Johnson and that—

> Captain Shipp was very anxious, as well also as the judge and myself, that no mistake be made with reference to the fact as to whether

or not we had the man that committed the outrage; so he suggested that he would very gladly put opposing counsel in possession of all the facts that he knew, if it was proper to do so. I said to him that that was unusual, in fact unheard of, but that I believed it was a proper suggestion. Acting on that suggestion, I called the counsel for the defendant, Ed. Johnson, and Captain Shipp into Judge McReynolds's office, and in his presence had Captain Shipp state to opposing counsel all the facts that were in our possession, giving the names of the witnesses and what each would prove, and where each lived, so that opposing counsel might have full and fair opportunity to investigate the soundness of the state's testimony, in order that no mistake might occur and that we might possibly convict an innocent man. That was what was done.

Q. By "opposing counsel" you mean, of course, the attorneys for Ed. Johnson?

A. Yes, sir. (1636–1638, 1640.)

S. D. McReynolds, the judge who sat at the trial of Johnson, testified as follows:

Q. What do you know about Captain Shipp's giving the attorneys for the defense such information as he had with reference to who would testify for the State and the character of the testimony.

A. I know he did that, and I further know that I requested him to do it. They were all in my office, the attorneys for the defense, together with Mr. Whitaker, and I remember Captain Shipp talking about the case; and I

asked him especially, there in the presence of these gentlemen, "Captain, I wish you would go over, in detail, all the proof you have against this man, and give them the names of the witnesses who will testify to this particular state of facts so that they will not be met with any surprise, and so that these gentlemen can investigate it and put up a proper defense for this defendant." That was done.

Q. He did that, and gave them a full statement of the testimony the State had?

A. Yes, sir.

* * * * *

Q. Judge, the statement given by Captain Shipp to the attorneys for the defense was a full and fair statement of what the evidence turned out to be, was it not?

A. Yes, sir. The only surprise (and that was a surprise to both sides) was in reference to a clock. Some of the defendant's witnesses proved an alibi by a certain clock, and we sent an officer out to find the man who put the clock in, and brought him in without knowing he would say the clock was there. That was the only surprise.

* * * * *

Q. That evidence with reference to the clock was testimony that was not in Captain Shipp's keeping at the time he informed the counsel for the defendant what the State's evidence was?

A. Certainly. He did not know what the proof would be, and then when the party who put the clock in was sent for it was not known what he would state. He was sent for to get the truth. (1738-1739.)

Defendant Shipp testified as follows:

Q. State who, if anyone, was appointed to defend Johnson during the trial, and how the trial was conducted.

A. I do not think there ever was a prisoner that was so well defended, and by more able lawyers.

* * * * *

It was the great anxiety of the criminal judge, the attorney-general, and the defendant's attorneys, as well as myself, that the man should be tried and that the law should be upheld.

A conference was held, and a good many suggestions were made with reference to how the prisoner should be brought back safely and protected during the trial, and it was suggested that I go to Nashville and call upon the governor for two companies of militia, that they might accompany me back with this prisoner, to secure his safety, and to assist in protecting him during the progress of the trial.

Johnson's three attorneys were there, the criminal judge, and the attorney-general, the Rev. Mr. Bachman, and the mayor of the city, all of whom were very much interested in seeing that the man was protected and that the law was upheld.

I said to them that I would undertake to bring this man back myself individually; that if the militia was called for I could not control them, and the chances were there might be a lot of people killed; and that I would undertake to bring the man in safety, and I believed I

could do it, and not only protect the prisoner but protect the community. (2148–2150.)

Rev. J. W. Bachman testified:

> A. At the time, as I believe, the sheriff, as oftentimes the other officials, dropped into my study and had consultations with me. We had some consultations in regard to that, and the effort to arrest and obtain the prisoner, or the man who was suspected of the rape? At that time we held a consultation with the sheriff and the judge. I was called by the criminal judge into council with the sheriff and the attorneys on both sides, about the trial of the case and what we thought ought to be done, and everything seemed to me to be a desire to give the man a fair hearing and—I was called as an old citizen and as having to do with a great many things. I am a preacher, but they make me do everything. The judge sent for me; I do not know but what the sheriff himself came for me to go over to that council, and the question was up whether we could have a fair trial, and we agreed that we could and then the trial proceeded. (1798.)

IV. EVIDENCE AS TO CHARGE OF JUDGE McREYNOLDS TO THE GRAND JURY AND ITS ACTION RELATIVE TO INDICTING LYNCHERS.

The charge of Judge McReynolds to the grand jury relative to indicting the parties of the mob or officials for their acts or neglect in connection with the lynching of Johnson was introduced. (1761-1763.)

In connection with its introduction Judge McReynolds testified:

> Q. I will ask you if you charged the grand jury after that, and if you did not have your grand jury investigate this lynching?
>
> A. I certainly did, and I gave my grand jury the name of every party that I had any information was at that lynching that night. I delivered a pretty strenuous charge to them. (1760.)
>
> Q. Now, Judge, were any indictments found by the grand jury?
>
> A. No, sir.
>
> Q. After an investigation of that affair, did your grand jury make any complaint against Captain Shipp?
>
> A. No.
>
> Q. Or any of his deputies; any of these defendants?
>
> A. No, sir. (1763.)

Mr. Whittaker testified:

> Q. I will ask you whether or not the state criminal court of which you are attorney-general has attempted to investigate and indict those lynchers since that time?
>
> A. Oh, yes; Judge McReynolds gave the grand jury a special charge with reference to it, and directed their attention in very strong language toward the violation of the law in that respect; and I had summoned many witnesses before the grand jury to investigate it; and I violated my usual way of doing business by going before the grand jury and directing them, if they could find any evidence that would

connect any parties with that lynching, that would in anywise justify the return of an indictment, that I wanted one returned.

Q. I will ask you if the investigating officers for the Government—I mean by that the detectives, or inspectors—laid before you any of the evidence they had gathered up or gave you any assistance whatever in investigating that matter before your grand jury?

A. None whatever. I do not know any of those gentlemen, and never did meet them. (1659–1660.)

J. S. Bell testified that he was foreman of the grand jury which investigated the lynching of Johnson and as follows:

Q. I will ask you to state whether or not your grand jury made a special investigation of the Ed. Johnson case, or were you called together specially for the investigation of that case?

A. I do not know that we were, especially. We were the regular grand jury at the time, and were charged to investigate it, and did try to do it.

Q. The grand jury was in session when the lynching occurred, was it not; or were you reconvened? How was that?

A. No, I think it was not in session when it occurred. It was afterwards.

Q. And your grand jury was reconvened after the lynching occurred?

A. Yes, sir.

Q. Upon the reconvening of the grand jury, state whether or not——

A. We were not the grand jury at the time it occurred. I think we were called afterwards as a separate jury.

Q. Oh, yes. State whether or not the criminal judge gave a charge with reference to that lynching.

A. Yes, sir.

Q. With reference to investigating that lynching?

A. Yes, sir.

Q. What did you do with a view to finding out who participated in that lynching?

A. We summoned quite a number of parties and examined them in order to find out what had occurred.

Q. You even went to the extent of summoning the judge and the Attorney-General both?

A. We summoned the court and the Attorney-General and some other officers, some of the state guards, and various others that we thought ought to know something about it, and it had somehow come to us that they did know, possibly, something.

Q. I will ask you to state whether you made an earnest and energetic effort to find out who it was who participated in the lynching.

A. Yes, sir.

Q. And you got no testimony that would authorize you to return a true bill against anybody?

A. No, sir; we did not find enough, as we thought, to warrant us in doing anything of the kind. (2128, 2129, 2130, 2131.)

II.

Miscellaneous Evidence Which Should be Excluded.

We submit for obvious reasons the following evidence, which was objected to, should be excluded:

Evidence that the girl's father was a northern man, wears a G. A. R. button, and was a federal soldier. (114, 115.)

Evidence that Captain Shipp is a mason. (665.)

Evidence as to orders, unions, etc., Galloway belongs to. (2078.)

Copy of indictment introduced to impeach the complainant's witness Franklin. (539.)

Evidence as to warrant for arrest of complainant's witness, Mrs. Lee, introduced to impeach her. (P. 1260 of printed record.)

Evidence as to the reputation of the business complainant's witness, Mrs. Baker, was engaged in, introduced to impeach her. (2203, 2204, 2209.)

Evidence as to why W. T. Center ordered the complainant's witness, Mrs. Baker, out of his house, introduced to impeach her. (2205, 2206.)

Prince, one of the witnesses called to support Ward's alibi, testified that the morning after the lynching Ward came into his saloon. He was asked, "What happened between you and Ward that fixed it on your mind that it was the next morning after the lynching?" to which he replied: "I believe Mr. Ward, after some conversation, told me Ed Johnson was lynched last night. I said, 'Frank, if you had not been so damn drunk last

night you might have been in that too.'" (1080, 1081.)

Ward also gave testimony of this same conversation. (1114, 1115.)

Mr. Whittaker testified:

> Mr. Spurlock suggested that perhaps we had better intercept Captain Shipp; that if there was any trouble really at the jail he might hurt some one or some one might hurt him. (1654.)

Judge McReynolds also testified that Spurlock said:

> Now, I know Captain Shipp very well, and he is liable to rush in there and get killed or kill somebody, and we had better get down there and tell him what we know about the situation, so we can go in there and be cautious about it. (1750.)

III.

Testimony relative to conversations between Defendant Shipp and others immediately after Johnson was taken from the jail.

M. J. Horan testified, against objection, that he saw Defendant Shipp right after the lynching, and that Shipp said to him: "My God, they have ruined me," and that he had the following conversation with him:

> I told Sheriff Shipp to sit down, and he started to sit down. Then he jumped back up and he said, "My God, I did everything I could." I said, "I know that, Sheriff." I said, "You are not to blame. You have done everything any man could have done." I said, "No one expected this." He said, "My God, no." I told him to sit down again. I

> asked him if I could get him a drink, and he shook his head. He said no. I asked him if he thought he was going to faint, with his head hanging over, and I walked out to see if I could get him a drink of water. I didn't see any, and I came back and resumed my conversation with him. I told him no one in the world knew anything about it. He said, "My God, I did not." I told him no one did. I told him I was down on the street, right there at the jail, before I heard or saw anything. (2119, 2120.)

This conversation is again referred to on page 2127.

These statements of Horan referred to in this testimony are clearly irrelevant and immaterial and can not be considered as having any tendency to prove whether or not the lynching of Johnson was apprehended or whether or not Shipp was in any way to blame. The statements made by Captain Shipp were mere self-serving declarations and they are obviously incompetent.

Mr. Whittaker testified over objection:

> Q. I will ask you whether or not, Mr. Whittaker, you made Captain Shipp acquainted with the efforts you had made to arouse the city?
>
> A. Yes.
>
> Q. And the failure you had met?
>
> A. Yes. I do not, however, accept the suggestion "to arouse the city." We simply tried to arouse such officers of the city as we thought could give the most assistance, if assistance was needed. (1658.)

What Mr. Whittaker may have done to prevent the lynching can have no bearing, so far as we can see, upon the guilt or innocence of Captain Shipp. Moreover, what Mr. Whittaker told Captain Shipp has no tendency to prove what Whittaker may have done and does not in any way excuse or explain the actions of Captain Shipp.

IV.

Testimony to the Effect that the Lynching Came as a Great Surprise to the Witnesses, that They did not Expect a Mob, etc.

Testimony to the effect that the witness was greatly surprised when he heard of the lynching is found on pages 622, 1621, 1622, 1649, 1693, 1707½, 1853, 1874, 1902, 1913, 1939.

Personal opinions of witnesses to the effect that they themselves did not expect that Johnson would be mobbed on March 19 are found on the following pages: 621, 659, 660, 664, 1534, 1648, 1649, 1713, 1742, 1746, 1845, 1895, 1902, 1930, 1931.

Testimony to the effect that other persons told the witness there was no apprehension of a mob or reason to apprehend one: Pages 1708, 1712–1714, 1722.

Testimony was also given as to the witness's impression as to whether there would be a mob. (1895.)

Complainant objects to all of this testimony.

The state of the public mind, whether or not there was public agitation or excitement over the delays in the Johnson case, were proper matters of inquiry in this proceeding. What a person saw or heard in the community tending to show the public feeling might be admitted upon these points, and if one had

made sufficient inquiry or observation to justify a conclusion as to the state of the public mind he might be permitted to testify as to what it was according to his investigation or observation, but it is clearly incompetent to show these facts by statements of individuals to the effect that they were surprised or did not expect the lynching, or that there was no reason to apprehend mob violence. As opinion evidence these statements should be excluded. One might have seen or heard enough to make most men believe that an attempt would be made to lynch Johnson, and yet he might himself have been surprised when the lynching occurred. The mere fact that certain persons were not convinced in their own minds that there was danger of a lynching is incompetent upon the point whether or not officers of the law, whose duty it was to be informed as to public feeling and dangers of violence, did in fact or had reason to expect an attack upon the jail.

Some of this evidence is merely hearsay.

V.

Testimony as to the Pastor's League and its Meeting the day of the Lynching.

Rev. J. W. Bachman testified that the pastors of Chattanooga have an association which meets every Monday morning and that it met on the morning of March 19, the day Johnson was lynched; that the association has a committee on law and order, the duties of which are to keep a lookout and see what things are going on and what violations are taking place in order that the ministers may be helpers to

the officials in seeing that the law is obeyed and that members of the association who desire a matter brought to the attention of the association report to the committee which brings the matter before the association; that it would have been the duty of the committee if it or any member of it had known or had reason to believe that there was apprehension that Johnson would be lynched to have reported such fact to the meeting; that no report was made by the committee and no reference was made at the meeting to apprehension of lynching. He also gave testimony as to the members of the committee and that a member of it reported on that Monday that he had been out among the saloons on the previous Saturday night with 25 or 30 men, with a view to getting men to attend services of the Y. M. C. A. on the following Sunday, but he made no report of any apprehension as to the lynching. (1810–1813.)

This evidence introduced to support the statement of Shipp and his subordinates that they did not apprehend mob violence has no tendency to prove such fact and should be excluded. The evidence does not show what anyone saw or heard in the community during the days preceding the lynching; at most it can only be considered as indicating the conclusion of certain men that a mob was not to be apprehended. This was a mere matter of opinion with them, and there is nothing to indicate the facts upon which this opinion was based. It is incompetent as opinion evidence, as well as being immaterial.

Rev. Ira M. Boswell gave evidence to the same effect. (1692.)

Mr. Bachman testified that there was a meeting of the Pastors' League on the Monday following the lynching, at which the lynching was discussed and resolutions were adopted condemning the lynching and deploring the condition of things and the disrespect shown the courts and law of the country. (1813.) Mr. Boswell gave testimony as to a sermon he preached the Sunday following the lynching. (1692.) These pieces of evidence are obviously incompetent.

All of the evidence here referred to was objected to.

VI.

Testimony as to individual opinion whether anything could have been done after Johnson was taken from the jail to have prevented the lynching.

Mr. Whittaker was asked, "When you and Judge McReynolds reached Captain Shipp after the mob had passed away, was there anything that could have been done by Captain Shipp that could have prevented the lynching at that time, that you saw?" to which he replied: "Any answer I could make to that would only be an opinion, but a very pronounced one, that it would have been idle and silly to try to intercept that mob under the conditions that then prevailed." (1659.)

Judge McReynolds, in response to a like question, testified:

> I have thought of it a good deal. Unless he had some of his officers there I do not see what good he could have done. I think it is an absurd idea to summon people to go there at that time after the mob. (1757.)

The same kind of testimony was given by Samuel T. Dewees, who was asked: "Whether or not you would have felt, and if you believed that other law-abiding citizens like you would have felt, like voluntarily risking your life to protect a man that you believed guilty of committing a crime of that kind?" He replied: "I do not know as I would like to risk my life to do it, no," and that he did not think others would have wanted to have risked their lives. (1942, 1943, 1944.)

This testimony was objected to and as opinion evidence it is clearly incompetent.

VII.

Evidence as to reasons why appeal was not taken in Johnson's trial in the state court which were not made public.

Considerable testimony was introduced by defendants as to the reasons why the lawyers in charge of Johnson's defense did not take an appeal from the judgment upon the verdict of guilty to the supreme court of the State of Tennessee. This testimony tended to show that the reason why an appeal was not taken was because the lawyers thought there was no reversible error in the case. (1683, 1784, 1785, 1951, 1952, 1959, 1960.)

Complainant introduced a statement made by Mr. Thomas, counsel for Johnson, of the reasons why an appeal was not prosecuted, one of the principal reasons stated being; that they felt that Johnson would be lynched if he was not hung without delay according to his sentence. This statement of Mr. Thomas was made public through the press and was introduced

by the Government because of the publicity which was given it as well as because of its weight in showing the state of the public mind, which was a proper matter of inquiry. The reasons which actuated Johnson's lawyers in declining to appeal his case in so far as they were not made public and did not tend to show the condition of the public mind are immaterial and irrelevant to the issues in this contempt proceeding. The evidence found on the above-mentioned pages having been objected to should therefore be excluded.

VIII.

Testimony of Defendants' Wives.

Defendants Justice, Mayes, and Ward introduced, over objection of complainants, the testimony of their wives in support of their alibis. (734, 901, 1975.) At common law the wife of a defendant could not testify in his behalf in a criminal prosecution. While we do not think the statutes of Tennessee could have any bearing upon this question, they have made the wife competent to testify for or against her husband in civil cases (sec. 5596 of Shannon's Code, 1896), but have not removed the common-law disability in criminal cases.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

EDWIN W. LAWRENCE,
Special Assistant to
the Attorney-General.

O

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. MCKENNEY,
Clerk.

No. 5 Orig.
O. T. 1907

~~No. [illegible] Original~~

In the Supreme Court of the United States.

~~OCTOBER TERM, 1906.~~

THE UNITED STATES OF AMERICA,
Complainant,

vs.

JOHN F. SHIPP,
PAUL WERNER, who is named in the Information as "Sheenie Werner"
ET ALS,
Defendants.

No. 5 Orig
O. T. 1907

ANSWER OF PAUL WERNER TO THE RULE TO SHOW CAUSE.

CUMMINGS & CHAMLEE,
Attorneys for Defendant.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP,
PAUL WERNER, who is named in the Information as "Sheenie" Werner, ET AL.,
Defendants.

ANSWER OF PAUL WERNER TO THE RULE TO SHOW CAUSE.

And now comes the defendant, Paul Werner, who is referred to in the information as "Sheenie" Werner, and for answer to the rule herein to show cause why he should not be attached and punished for contempt of this honorable court, says:

1st. That he is advised that the Supreme Court of the United States of America had no jurisdiction of the cause of Ed Johnson, complainant, vs. The State of Tennessee, and that all proceedings had by the United States Supreme Court in the matter of Ed Johnson, complainant, vs. The State of Tennessee, were null and void and illegal.

2d. That he is advised that the original petition for a writ of habeas corpus that was sued out by the said Ed Johnson, complainant, vs. The State of Tennessee, was addressed to the United States District or Circuit Court at Chattanooga, Ten-

nessee, and that the original petition was presented to and tried before the Honorable C. D. Clark, one of the judges of the United States Court, not at Chattanooga, Tennessee, but at Knoxville, Tennessee, at Chambers, and he is advised that from the dismissal of said petition by the Hon. C. D. Clark, Judge, etc., for the writ of habeas corpus tried at Chambers, that there is no appeal and that the appeal that the said Ed Johnson undertook to perfect was in law ineffective and that this Honorable Court did not acquire jurisdiction of the case because a transcript was presented and authorized to be filed in this Honorable Court.

3d. Not waiving any of his rights contained in the pleas for a want of jurisdiction by this Honorable Court in this case, but pleading and relying upon the same as a full and complete defense of this case, this defendant, Paul Werner, comes and for answer to the rule in this cause, and answering so much and such parts of said information as he is informed is material for him to answer, and for answer thereto says:

That he denies that he aided or assisted in the lynching of the said Ed Johnson, or that he had anything to do with encouraging, promoting or comforting the lynchers while they were preparing or executing their plans or lynching Ed Johnson. He says that he did not know, nor hear of any effort being made to lynch the said Ed Johnson until the next morning after the lynching had occurred. That at the hour that Johnson was lynched that he was at his home, 613 East Fifth Street, in the City of Chattanooga, Tennessee, and that he was not at the county jail; that he did not see Ed Johnson on that night; did not witness the lynching at the county bridge; had nothing in the world to do with it; and knew absolutely nothing about it.

4th. He further says that he denies each and every allegation contained in the information that accuses or charges him with any complicity whatever with the said Ed Johnson or with conspiring or confederating with the sheriff of said County of

Hamilton, or conspiring, confederating or agreeing with any other person to aid or assist in the breaking or entering of the county jail of Hamilton County, Tennessee, for the purpose of taking therefrom the body of the said Ed Johnson to lynch and murder him for any purpose whatsoever. He denies that he was a party to any compact, confederation or agreement to do any act that would be a contempt of this Honorable Court or to show any contempt for this Honorable Court or to prevent this Honorable Court from hearing and determining the appeal of the said Ed Johnson. He further says that he is not guilty of the charge made against him in the information; that he denies absolute and in toto all knowledge or connection of any conspiracy to lynch Ed Johnson and that he has not committed himself, nor directed nor encouraged any other person to commit any act that would be a contempt of this Honorable Court, or to show his disrespect or disregard for the orders of this Honorable Court or to prevent this Honorable Court from hearing and determining the appeal of the said Ed Johnson.

He further says that the accusation made against him in this cause does him a great and serious wrong and that it is not true, and that if an opportunity is afforded him to do so, he will undertake to prove by witnesses who know the facts that he was at his home on the night and at the very hour that Johnson was lynched and that he could not have been a party to that transaction.

WHEREFORE, this respondent says that he denies each and every allegation made against him in this cause.

And now, having fully answered, he prays to be dismissed from the requirements of said rule to show cause why he should not be punished for a contempt of this Honorable Court.

W. H. CUMMINGS,
G. W. CHAMBLEE,
Attorneys for Defendant.

STATE OF TENNESSEE,
COUNTY OF HAMILTON.

Paul Werner, who is named in the information as "Sheenie" Werner, says that he is the respondent in the above styled cause and that the facts set out in the foregoing answer are true as he verily believes.

PAUL WERNER.

Sworn to and subscribed before me
and in my presence, this 9th day
of October, 1906.

R. M. WATKINS,
Deputy Clerk U. S. Circuit Court.

OCT 15 1906
JAMES H. McKENNEY,
Clerk.

FILE COPY.

~~No. 12 Original.~~

In the Supreme Court of the United States

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA, complainants.
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 5 Orig.
O. T. 1907

ANSWER OF JOHN VARNELL,
ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

The answer of John Varnell to the Information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said Information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of

taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

Defendant is a police officer of the City of Chattanooga, in Hamilton County, Tenn. On the 19th day of March, 1906, the date said Johnson was hanged, defendant was on duty as a policeman from 5 o'clock A. M. until 3 o'clock P. M. After being relieved of duty defendant went immediately to his home in said City of Chattanooga, and remained there until the next morning at work time. Defendant's daughter was critically ill on said date, and had been for some weeks previous to that time, and defendant was forced to stay with her at night. On said date defendant was at the bed side of his sick child ministering to her needs, from the time he went home until near midnight. Upon going on duty the following morning defendant heard for the first time that Ed. Johnson had been hanged the night before.

This defendant denies that he ever at any time did any

act to show contempt and disregard for the order of this Honorable Court or to prevent this Court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

JOHN VARNELL.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared John Varnell and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

JOHN VARNELL.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. McKENNEY,
Clerk.

[redacted]

In the Supreme Court of the United States.

[redacted]

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 5 Orig.
O. T. 1907

ANSWER OF CHARLES J POWELL, ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

Answer of Charles J. Powell to the information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said Information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of

taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

On said date the defendant was employed at the Chattanooga packing house, engaged in killing cattle for the Chattanooga market. He went to work early in the morning of said date, and worked until about 11 o'clock P. M. Said packing house is situated in St. Elmo, Tenn., a distance of more than three miles from the Hamilton County jail. Defendant has no regular hours of work, but is required to kill all cattle delivered on each day. There was a large number of cattle to be killed on said date, and he did not finish his work until 11 o'clock P. M., as aforesaid.

After leaving his work, defendant went to his home and heard nothing of the lynching until the following morning.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this Honorable Court or to prevent this Court from hearing the appeal

of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

CHARLES J. POWELL.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared Charles J. Powell and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

CHARLES J. POWELL.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. McKENNEY,
Clerk.

~~No. 12 Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA,
Complainant,
vs.
JOHN F. SHIPP,
LUTHER WILLIAMS ET ALS,
Defendants.

No. 5 Ori
O. T. 190

ANSWER OF LUTHER WILLIAMS TO THE RULE TO SHOW CAUSE.

CUMMINGS & CHAMLEE,
Attorneys for Defendant.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP,
LUTHER WILLIAMS ET ALS,
Defendants.

October Term, 1906.
No. 26.

ANSWER OF LUTHER WILLIAMS TO THE RULE TO SHOW CAUSE.

And now comes the defendant, Luther Williams, and for answer to the rule herein to show cause why he should not be attached and punished for contempt of this Honorable Court, says:

1st. That he is advised that the Supreme Court of the United States of America had no jurisdiction of the cause of Ed Johnson, complainant, vs. The State of Tennessee, and that all proceedings had by the United States Supreme Court in the matter of Ed Johnson, complainant, vs. The State of Tennessee, were null and void and illegal.

2d. That the original petition for a writ of habeas corpus that was sued out by the said Ed Johnson, complainant, against the State of Tennessee, was as this respondent is advised, addressed to the United States District Court at Chattanooga,

Tennessee, and that the original proceedings were presented and tried before the Hon. C. D. Clark, Judge of the United States Court, not at Chattanooga, Tennessee, but at Knoxville, Tennessee, at Chambers, and he is advised that from the dismissal of said petition for the writ of habeas corpus held at Chambers, that there is no appeal and that the appeal that the said Ed Johnson undertook to perfect was, in law, ineffective and that this Honorable Court did not acquire jurisdiction of the case because a transcript was presented and filed in this Honorable Court.

3d. He is advised that Ed Johnson was not a United States prisoner, but that he was a State prisoner, and under the charge of State officials and that in order to make him a United States prisoner, a different proceeding than that which was had in this cause would be required to make said proceedings valid under the law.

4th. That if Ed Johnson, was as a matter of law, a United States prisoner at the time that he was lynched, that no notice of that fact had ever been conveyed to this respondent by any person whomsoever.

5th. That under the law of the United States and the facts of this case, he is advised that this Honorable Court had no jurisdiction to proceed with said cause of Ed Johnson, appellant vs. The State of Tennessee, under the facts as alleged in Johnson's petition, and that the case would, upon motion or demurrer, had to have been dismissed or stricken from the docket according to the rule laid down in the case of Caleb Powers vs. The Commonwealth of Kentucky.

6th. Not waiving any of his rights as stated in the foregoing pleas for want of jurisdiction by this Honorable Court

in this case, but pleading and relying upon the same as a full and complete defense to this case, this defendant, Luther Williams, now comes and for further answer to the rule in this cause, and answering so much and such parts of said information as he is informed is material and proper for him to answer, says:

That he was not an officer and that he did not have Ed Johnson in his charge, care or custody at any time or place whatsoever.

He says that he is a business man and runs a saloon at No. 630 Market Street, in the City of Chattanooga, Tennessee, and that his place of business is on the east side of Market Street between Sixth Street and Seventh Street; and that the county jail of Hamilton County, Tennessee, is on the west side of Walnut Street between Sixth and Seventh Streets and that between the county jail and his place of business, there is one cross street.

He further says that the first notice that he had of a mob intending to assemble at the jail or were assembling at the jail in Chattanooga on the night of March 19, 1906, was that about 9:30 to 10 o'clock P. M., someone came in his saloon and called attention of those present there, that a mob had assembled at the county jail for the purpose of lynching a negro. Inquiry being made, it developed that it was Ed Johnson.

Under a law of the City of Chattanooga, all saloons were required to close at ten o'clock P. M. every night except Saturday night, and then at eleven o'clock on Saturday night. March 19, 1906, was on Monday night as affiant now remembers and it was nearly closing time when he received his first information about a mob at the county jail. He knew that if trouble was about to occur in that neighborhood that all saloons ought to close in order to prevent members of the mob becom-

ing intoxicated and committing violence, and for this reason, he immediately closed his saloon and in a few minutes went up to the county jail which was a distance of about 200 yards, and when he got there, a mob was in control of the jail. A large crowd of men had their faces covered and were disguised so that no one could tell who they were and were proceeding to break down the doors of the jail and in a very short time after his arrival, Johnson was taken out and carried to the county bridge and lynched.

This respondent saw the lynching; was on the bridge where he could witness the entire trouble as a spectator with hundreds of other people who were on the bridge at the time.

He is well known to a number of people who were at his saloon on the night that Johnson was lynched and who were about the county jail as spectators at the time, and he was not disguised; made no effort to conceal his own identity; he had no part whatever in aiding or counseling the mob to lynch Ed Johnson and had nothing in the world to do with the entire trouble. Just like people go to see a great fire or anything else of excitement that is about to happen, he went up to the jail to see what the mob was doing and what was going to happen to Johnson.

He denies that he was a member of said mob or that he had anything to do either by word or action, aiding or abetting in the alleged lynching, or that he counseled or conspired or confederated with any person or persons whomsoever to lynch the said Ed Johnson.

He denies that he endeavored or conspired or confederated or agreed together or formed a combination with any person to break or enter the county jail or to lynch the said Ed Johnson or to do any other act to prevent this Honorable Court from hearing and determining the appeal of the said Ed Johnson, or

to show any contempt for this Honorable Court, and he denies each and every allegation made in the information against him in this cause, that by implication could be construed to mean that he had aided or consented to the lynching of the said Ed Johnson, or committed any other act or conspired, confederated or agreed to commit any other act, or agreed for any other person to commit any act towards the lynching of the said Ed Johnson, or to break or enter the county jail of Hamilton County, Tennesssee, or to prevent this Honorable Court from hearing the appeal of the said Ed Johnson, or to show his contempt for the orders of this Honorable Court, or to do any other act that would be disrespectful of this Honorable Court.

He says that he is not a lawyer, does not know what it takes to vest this Honorable Court with jurisdiction of this case, but makes the pleas as to the jurisdiction upon the advice of his lawyers in this cause; but independent of his pleadings that he can prove that he had no part in the lynching of Ed Johnson, and that on the merits of his case, he stands ready to show to this Honorable Court that he is entirely innocent of the charge made against him, and that if an opportunity is afforded him, he will be pleased to present his evidence to sustain his contention as made in his answer.

He says that after Ed Johnson was lynched, that the great crowd that had congregated at the bridge began to disperse and that he went to his home where he spent the remainder of the night. That this was between ten and eleven o'clock, as he believes.

WHEREFORE, this respondent says that he denies each and every allegation made against him in this cause.

And now having fully answered, he prays to be dismissed from the requirements of said rule to show cause why he should not be punished for a contempt of this Honorable Court.

W. H. CUMMINGS,
G. W. CHAMLEE,
Attorneys for Defendant.

STATE OF TENNESSEE,
COUNTY OF HAMILTON.

Luther Williams, being duly sworn, says that the facts set out in the foregoing answer are true as he verily believes.

LUTHER WILLIAMS.

Sworn to and subscribed before me and in my presence, this 9th day of October, 1906.

R. M. WATKINS,
Deputy Clerk U. S. Court.

FILE COPY.

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JAMES H. McKEN

[redacted]

In the Supreme Court of the United States

[redacted]

No. 5 O
O. T. 190
No. 12

THE UNITED STATES OF AMERICA,
Complainant

vs.

JOHN F. SHIPP AND HIS DEPUTIES AS SHERIFF, AND OTHERS,
Defendants

ANSWER OF JAMES WILLIAM BEELER TO THE RULE TO SHOW

HEAD & FORD,
Attorneys for Defendants.

In The Supreme Court of the United States

OCTOBER TERM, 1906.

The United States of America,

vs.

John F. Shipp and his Deputies as Sheriff, and Others.

No. 26

ORIGINAL

Reply of James William Beeler to the information filed in this cause by the Honorable William H. Moody, Attorney General of the United States, against the Sheriff of Hamilton County and his Deputies as such Sheriff and Others, including among the others, this Respondent.

And now comes this defendant in proper person, who is called in the petition William Beeler, and for reply to the petition says his true and lawful name is James William Beeler, and he is a citizen of Hamilton County, Tennessee, and was such at the time that one Ed Johnson, a colored man, was put to death in Chattanooga, Tennessee. Now he lives in the City of Chattanooga, and is engaged in the retail liquor business at No. 201 Market Street in said City, and was engaged in the same business at the same place when said Johnson was put to death, though at that time he lived with his family, consisting of wife and two children, in Avondale, two miles from his place of business.

Upon information and belief, he admits that the said Ed Johnson was tried and convicted of the crime of rape in the Criminal Court of Hamilton County, held in Chattanooga, on or about the 11th day of February, 1906, and was adjudged to suffer the penalty of death therefor. While he may have heard thereafter of some proceeding taken, or to be taken, in his behalf, respondent is not able to say what the proceedings were, as taken or contemplated, and he feels sure that he never knew anything as to the result of the

same, and that he did not know the nature thereof or grounds therefor. As to the trial before the United States Court for the Eastern Division of Tennessee upon this petition, return, answer and replication and the testimony of witnesses examined in open Court, together with the argument of counsel, he knows nothing; at least now he remembers nothing whatever more than this:—he had heard in some way that proceedings had been taken or were to be taken in his behalf to have his case carried to the Supreme Court of the State or some higher Court, but which he did not know. Respondent does not keep posted as to the proceedings in the Courts; he, however, remembers reading or hearing nothing whatever about the petition presented to the Hon. John M. Harlan, an associate justice of this Court, or any action had thereon. This Respondent feels sure that he did not known at the time Ed Johnson was put to death, that this Court had made any order touching his case or of the notification given of such order by the Clerk of this Court to the Sheriff of Hamilton County or other person. If any publication of the order was made in the evening papers of the City on March 19, 1906, he has now no recollection of reading or hearing of the same. He did not then know that Ed Johnson was in confinement in the jail of Hamilton County, for he had been confined in jail outside of Hamilton County, and Respondent did not then know where he was confined.

As to the statements contained in the petition relating to the Sheriff and his deputies, Respondent knows nothing, and he is advised that it is not material that he make further answer.

Respondent will here state that he was not one of the mob who took said Ed Johnson from the jail and put him to death, and had no knowledge that such action was to be taken. Hence he denies that on the evening or night of March 19, 1906, in Chattanooga, he in any way "willfully, wrongfully, did combine, conspire, confederate and agree together to break and enter the said county jail of Hamilton County for the purpose of taking therefrom the person of the said Ed Johnson to lynch and murder him (the said Ed Johnson) with intent then and there had and entertained by the said defendants, and each of them, to show their contempt and disregard for the order of this Honorable Court, made, entered, issued and published as aforesaid, and for the purpose of preventing this Honorable Court from hearing the appeal of the said Ed Johnson allowed by this Court as aforesaid, and for the purpose

of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States." This Respondent had no connection with said lynchers or mob, and took no part in anything that was done toward the death of said Ed Johnson. When said mob assembled at and entered the county jail, as he is informed, Repondent was at his place of business aforesaid, attending to his business, and someone, whose name is not now remembered, came into his saloon and said there was a mob at the jail, when one of them tried to get connection with the jail to ascertain the truth of the statement made, but failed to get the connection. And then the policeman called up "Turners' Hall," from which place he learned that the mob had assembled at the jail, and that they had broken open the outside door and were already in the jail. It was then something after 9 o'clock at night, and Respondent remained in his place of business until after the hour for him to close his place of business for the night, which was 10 o'clock, fixed by an ordinance of the City Council for the closing of all saloons. Remaining there for a while after that hour straightening out things in the saloon, he left, walking up Market Street, intending to return to his home; and reaching Sixth Street, he heard a noise as of knocking or hammering up in the direction of the jail, when he turned into that street leading in the direction of the jail located on Walnut Street, between Sixth and Seventh Streets, and when he reached Walnut Street he turned toward the jail and walked a short distance, when he met Baxter Pope, who told him that the mob was in the jail, and in a few moments he and Pope crossed to the east side of Walnut Street, opposite side from the jail, when they saw the mob coming out of the jail with a colored man without hat or coat, and they passed with him on the opposite side of the street from Pope and himself, going in the direction of the river bridge. Then said Pope and Respondent went back into Sixth Street and walked toward Cherry Street, running parallel with Market and east of, and next to, Market Street, where they met Policeman Ed Boydston, and told him that the mob had a negro and had gone toward the bridge with him. The policeman said he ought to go there, and asked them to accompany him, which they did, accompanying him as far as First Street, which was near the bridge, and there they stopped, Boydston continuing on to and on the bridge where the mob was, and soon some shots were fired from that crowd, and immediately Pope and Respondent turned

away, separated, and Respondent went down First Street to Market Street on to the transfer station of the Electric Railway Company and took the next car for his home, which he reached and where he remained the rest of the night.

This is the whole truth so far as known to this Respondent and his whereabouts that night. And he did not know of the men forming or intending to assemble and doing what they did. He knew nothing whatever of what they purposed or were doing, except as herein stated; and he was not in conspiracy with anyone to lynch Ed Johnson or do him any harm, and in going on Walnut Street, as stated, he had no thought of encouraging, aiding, abetting in any way whatever the mob in accomplishing what they did He did not speak to any one of the mob nor did he know any of them, nor did he see their faces.

Respondent here files the affidavits of John T. Edwards, George Forbes, Edgar Boydston and Baxter Pope, good and reliable citizens of Hamilton County, Tennessee, as to his whereabouts on the night of March 19, 1906, from the hour of the early evening until after that when Ed Johnson was put to death by the mob; and these affidavits Respondent prays to have made a part of his response to this proceeding. They are filed as Exhibits A, B, C and E.

And now having fully answered the petition filed by the Attorney General of the United States in so far as the same implicates him as one of the mob on the night of March 19, 1906, he prays to be hence dismissed without cost.

JAMES WILLIAM BEELER.

HEAD & FORD, Attorneys for Respondent.

AFFIDAVIT.

State of Tennessee,

Hamilton County.

Personally appeared before me, John W. Head, a notary public, in and for the county and state aforesaid, James William Beeler, with whom I am personally acquainted, and who made oath in due form of law that the facts and statements as contained in the foregoing answer are true, and those stated upon information derived from others he, believes to be true.

JAMES WILLIAM BEELER.

Sworn to and subscribed before me this October 11, 1906.

JOHN W. HEAD, Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1906.

The United States of America
vs.
John F. Shipp and His Deputies as Sheriff, and Others. } No. 26.

Original.

In this cause comes John T. Edwards, and makes oath that he is a colored man, living in Chattanooga, Tennessee, and occupies the business house next to the saloon of the defendant, James William Beeler, and did so at the time that Ed Johnson was taken by the mob from the county jail of Hamilton County, Tennessee, and lynched. It was on the night of the 19th day of March, 1906, and on that night Affiant was at his place of business from about 5 o'clock in the evening until after 10 o'clock that night, and he knows the defendant Beeler well, and has known him for about four years. Their places of business have been adjoining for the past two years. He knows that Beeler was in his saloon that night from about dark until a few minutes after 10 o'clock thereafter, for the reason that Affiant was in his saloon several times between those hours, and each of them stood in their respective doors talking when neither had any customers to be waited on, and were talking together as they were accustomed to do. The defendant had on his white apron as a bartender, and was on duty that night from dark until after 10 o'clock, and was not absent therefrom between those hours. When Affiant got the news that a mob was at the jail and attempting to force an entrance therein, he went in defendant's saloon to tell him about it, and he was then therein, and the matter was talked of by and between Beeler, Affiant and the others in the saloon. There is a city ordinance requiring saloons to be closed at 10 o'clock at night, and at that hour Beeler closed his saloon and remained on the inside some twenty minutes, then came out on the street while Affiant was standing in the door of his restaurant, and he saw Beeler walk up Market Street toward the transfer station, as he was accustomed to do at night after closing and going to his home.

JOHN T. EDWARDS.

Sworn to and subscribed before me this October 4th, 1906.

JOHN W. HEAD, Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1906.

The United States of America
vs.
John F. Shipp and Deputies as Sheriff, and Others. } No. 26.

Original.

In this case the Affiant, George Forbes, makes oath that he is a citizen of Chattanooga, Hamilton County, Tennessee, and has been such resident for twenty-seven years, and is a cooper by trade, working at that business for the Chattanooga Brewing Company. Affiant is well acquainted with the defendant, James William Beeler, and on the night of March 19, 1906, when Ed Johnson was taken from the county jail and lynched by the mob, he was at the saloon of defendant Beeler, having gone there about 7 o'clock that night and remained there until he closed the saloon that night at or about 10 o'clock. He was in the saloon with Beeler from the time he went there until the saloon was closed, and was talking with Beeler much of the time, and he knows that during the time referred to, Beeler was not with the mob and did not leave the saloon, but was there on duty and waiting on his customers. Affiant and Beeler talked awhile in front of the saloon door after closing, when Beeler walked on up Market Street in company with Affiant, and they separated, Affiant going home and Beeler toward the transfer station. While Beeler and myself and others were in the saloon, some one came therein and told us of the mob being at the jail.

GEORGE FORBES.

Sworn to and subscribed before me this October 4th, 1906.

JOHN W. HEAD, Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1906.

The United States of America
vs.
John F. Shipp and Deputies as Sheriff, and Others. } No. 26.

Original.

In this cause comes Edgar Boydston, and makes oath that he is

twenty-eight years og age, and lives now and has resided in Chattanooga, Hamilton County, Tennessee, all his life, and he is acquainted with the defendant, James William Beeler, and on the night of March 19, 1906, when Ed Johnson was taken from the Hamilton County jail and lynched, he was in Chattanooga; and between 8 and 9 o'clock he went in the saloon of said defendant Beeler, and found him in there on duty and behind the counter, and while he was in there, some one came in and announced that there was a mob at the jail, and immediately Affiant went to the 'phone in the saloon and tried, but failed, to get connection with the jail. Then he succeeded in getting 'phone connection elsewhere, and learned of the mob being there. Affiant remained there but a short time, and during all this time Beeler was at the saloon, and did not leave. Affiant left, and on getting away from there, he heard the noise of hollowing along Walnut Street, evidently after the mob had left the jail with Ed Johnson, and later he met Beeler and Baxter Pope at the corner of Sixth and Cherry Streets, and they informed Affiant that the mob had a negro man and had gone toward the bridge with him. Affiant asked them to go with him, and they all started for the bridge, and on reaching First Street they stopped and would go no farther, when Affiant went on to and on the bridge near the end, when the firing of gun shots commenced and the negro had been put to death. Beeler and Pope did not go nearer the mob than as stated. And Affiant did not see anything more of them that night. After seeing Pope and Beeler at the place mentioned, he stopped at the first 'phone accessible to him and communicated with police headquarters, and gave there information of the mob being there with the negro.

EDGAR BOYDSTON.

Sworn to and subscribed before me this October 5th, 1906.

J. ALLEN HEAD, Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1906.

The United States of America
vs.
John F. Shipp and Deputies as Sheriff, and Others. } No. 26.

Original.

In this cause comes Baxter Pope, and makes oath that he is

thirty-one years of age and lives in Chattanooga, Hamilton County, Tennessee, and has resided there for about ten years. He is well acquainted with the defendant, James William Beeler; and on the night of March 19, 1906, when Ed Johnson was taken from the Hamilton County jail and lynched, he was in Chattanooga; and at or about the time specified the mob went to the jail, he was in a business house on Market Street, and some one came into that house, announcing the fact that a mob was at the jail, when Affiant left that place and went to Walnut Street near the jail to find out what he could see and hear; and after he had stood on the sidewalk for a while on Walnut Street, north of the entrance to the jail, the defendant Beeler came up to where he was standing, and they stood there a little while talking; and while standing on the east side of Walnut Street, between the jail entrance and Sixth Street, the mob came out of the jail building through the front yard and out at the front gate down on the sidewalk of the street, going towards the river bridge; and Affiant could see that they had a colored man in charge, but he did not know who it was, and neither could Affiant identify any of the members of the mob, and they went on out Walnut Street toward the bridge. After they had passed, defendant Beeler and Affiant went down Sixth Street towards Market Street, and at the corner of Cherry and Sixth they met Policeman Ed Boydston, and told him that a mob had a negro and the direction in which they had gone with him. Said Boydston requested Affiant and defendant Beeler to go with him, and they all started for the bridge. On reaching First Street, Affiant and Beeler stopped and went no farther in the direction of the mob, when an immense crowd could be seen on the bridge, and Affiant heard the firing of gun shots from that crowd. Affiant did not go nearer the mob than as stated. As soon as the shooting was heard, Affiant and defendant Beeler left the corner of First and Walnut Streets, and Affiant left Walnut Street at Fourth Street, and he thinks Beeler turned into First Street, which would be his route to his business place on Market Street. From the time affiant met Beeler on Walnut Street until they separated that night at the point stated, Affiant knows that Beeler was not a member of and had nothing to do with the action of the mob that night. Affiant runs a meat market in Chattanooga, Tennessee.

BAXTER POPE.

Sworn to and subscribed before me this, 11th day of October, 1906.

JOHN W. HEAD, Notary Public.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. McKENNEY,
Clerk.

~~No. 10 Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

No. 5 Ori
O. T. 1907

JOHN A. HOOD,
Attorney for Defendant.

In the Supreme Court of the United States.

October Term, 1906.

The United States of America,
vs.
John F. Shipp et al.
} No. 26. Original.

Now comes Frank Ward, one of the defendants in the above styled cause, and for answer to the Information and scire facias served on him in said case, says:

I.

That he admits the charges, conviction, and sentence of Ed. Johnson as set out and detailed in the first paragraph of the Information of Attorney-General William H. Moody, filed against defendant and others in this case.

II.

That the second, third, and fourth paragraphs of said Information defendant neither admits nor denies, as he has no personal knowledge of the facts therein detailed and set out, and knew nothing of this Honorable Court having granted any order in reference to said case against said Ed Johnson, or having taken any jurisdiction in said case whatever until the morning of the 20th day of March, 1906, when he read an account of the lynching of said Johnson in the Chattanooga Morning Times, which was the first information this defendant had, either of the lynching of said Johnson or of this Honorable Court having assumed jurisdiction of said case.

V.

That this defendant denies that he did combine, conspire,

confederate or agree with any person or persons to lynch, or murder, or kill, or injure in any manner the said Ed Johnson on the 19th day of March, 1906, or at any other time, and positively denies that he had anything whatever to do with the lynching of the said Ed Johnson, and has no knowledge of who was concerned therein, and knows nothing of the facts pertaining to the same, and denies that he has done anything, by word, thought, or deed, to bring him in contempt of this Honorable Court.

The facts are that this defendant is a brickmason by trade, and lives at 1057½ Market Street, in the city of Chattanooga, Tennessee, something near one-half a mile from the County Jail and Court House, and had been at work all day on the 19th day of March, 1906, and came home about supper time from his work, and after eating his meal, stayed about the building where he lives, and near thereto, at the places of business of Mr. Deitch at 1061 Market Street, and the place of business of Mr. W. P. Barnes at 1057 Market Street, all the evening and night of that day until he retired about 11 o'clock P. M., and was not about or near the County Jail, Court House, or Tennessee River Bridge, that day or on that night, and never knew of a rumor that said Johnson would likely be lynched that night, and never saw a copy of the evening paper of March 19th, 1906, referred to in paragraph 3 of the Information filed against him in this case, nor read, nor heard read, any communication in said paper, or any other paper of said date concerning the jurisdiction taken by this Honorable Court of said case, or have any information whatever in that respect upon said date, but as before stated, the first information this defendant had that this Honorable Court had assumed jurisdiction of said case, or that said Johnson had been lynched, was first communicated to him by an article he read published in the Chattanooga Morning Times on the 20th day of March, 1906.

Nor did this defendant know on said 19th day of March, 1906, anything about the Clerk of this Honorable Court notifying defendant John F. Shipp, or other person by telegram,

or otherwise, of the making, or entering of any order, to the effect that all proceedings against the said Johnson were ordered stayed by this Honorable Court.

As to the whereabouts of this defendant on the evening and night of the said 19th day of March, 1906, defendant herewith submits the affidavits of W. P. Barnes whose place of business is 1057 Market Street, Chattanooga, Tennessee, which affidavit is marked "Exhibit A" and attached hereto and made a part of this answer.

And this defendant also presents the affidavit of J. M. Prince, who is a clerk for said W. P. Barnes, at his place of business, 1057 Market Street, which affidavit is marked "Exhibit B" and attached hereto and made a part of this answer.

And this defendant also presents the affidavit of his wife, Mrs. N. E. Ward, who lives at 1057½ Market Street in Chattanooga, which affidavit is hereto attached marked "Exhibit C" and made a part of this his answer, and which, if competent, in this kind of a case, he respectfully submits same to the consideration of this Honorable Court.

And in further support of this defendant's innocence of the charge contained in the petition against him in this case, he herewith submits the affidavit of Mr. Walter Spradley whose place of business is 1061 Market Street in the city of Chattanooga, Tennessee, which is marked "Exhibit D" and attached hereto and made a part of this answer.

And now having fully answered defendant prays to be dismissed with his reasonable costs.

JOHN A. HOOD,
Attorney for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared before the undersigned authority, Frank Ward, defendant in the above styled cause, who being first duly sworn, deposes and says: That he has read the statements in the foregoing answer, and that the same are true to his own

knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

FRANK WARD.

Sworn to and subscribed before me on
this the 11th day of October, 1906.

E. J. NOLAN,
Notary Public, Hamilton County, Tennessee.

(SEAL.)

I hereby certify that my Commission as Notary Public, is dated on the 10th day of August, 1904, and expires on the 10th day of August, 1908.

E. J. NOLAN,
Notary Public.

(SEAL.)

"EXHIBIT A."

To the answer of Frank Ward in the case of the United States vs. John F. Shipp et al. No. 26 in the Supreme Court of the United States.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared before the undersigned authority, W. P. Barnes, who being duly sworn, deposed as follows: I am a citizen of Chattanooga, Tennessee, and reside at No. 10 Hotel Street, and own and run a saloon at 1057 Market Street in said city.

I remember the night that it is said that a colored man by the name of Ed Johnson was lynched on the 19th day of March, 1906.

I am acquainted with Frank Ward who is charged by the Government with participating in said lynching.

Said Ward lived at that time and still lives over my saloon at 1057 Market Street, Chattanooga, Tennessee.

I remember very well on that night that Mr. Ward was in,

and about, my saloon from six o'clock P. M. until after I closed my saloon at ten o'clock P. M.

He was drinking considerable that evening and was in and out of the saloon every few minutes from six P. M. until I closed my doors at ten o'clock that night, and after I closed, I remained in my saloon until about 11 o'clock working, and arranging everything for the next morning, and came out of my saloon about 11 o'clock to go home and found Mr. Ward on the outside in front, pretty well intoxicated, so much so, that I thought it best to put him on the inside of the hall door, which leads upstairs to where he lives, which I did. This was about 11 o'clock P. M. and when I put him on the inside I went home and never saw anything more of him that night.

W. P. BARNES.

Sworn to and subscribed before me on
this the 11th day of October, 1906.

E. J. NOLAN,
Notary Public Hamilton County, Tennessee.

(SEAL.)

"EXHIBIT B."

To the answer of Frank Ward in the case of the United States vs. John F. Shipp et al. No. 26 in the Supreme Court of the United States.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared before the undersigned authority, J. M. Prince, who being duly sworn, deposed as follows: I live in Chattanooga, Tennessee, at 407½ Patton Street and am a bartender for Mr. W. P. Barnes at 1057 Market Street in said city. I always go on duty at the saloon at 5 o'clock in the morning and remain on duty until 8 o'clock at night, and then Mr. Barnes relieves me at that time—8 P. M.

I remember the occasion of Ed Johnson being lynched on the 19th day of March, 1906. I am well acquainted with Mr.

Frank Ward who is accused by the Government of taking part in that lynching.

Mr. Ward lives up over the saloon at 1057 Market Street, and did at that time. After supper on that evening Mr. Ward came down into the saloon and was drinking some, and he remained in and about the saloon that night until I left after 8 o'clock P. M. I got off of duty at 8 o'clock P. M. that night but did not leave the saloon until about 8:20 P. M. and Mr. Ward was in the saloon when I left. He was considerably intoxicated when I left.

J. M. PRINCE.

Sworn to and subscribed before me on
this the 11th day of October, 1906.

E. J. NOLAN,
Notary Public Hamilton County, Tennessee.

(SEAL.)

"EXHIBIT C"

To the answer of Frank Ward in the case of the United States vs. John F. Shipp et al. No. 26 in the Supreme Court of the United States.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared before the undersigned authority, Mrs. N. E. Ward, who being duly sworn, deposed as follows:

I live at No. 1057½ Market Street in the city of Chattanooga, Tennessee, and am the wife of Mr. Frank Ward, who has been served with notice by the United States officers to appear at Washington, D. C., on the 15th day of October, 1906, as being implicated in the lynching of Ed Johnson, a colored man, some time ago, on the 19th day of March, 1906.

I know that on the night of that day Mr. Ward was here about the building where we live, from the time he ate supper about 5:30 or 6 o'clock P. M. up to about 11 o'clock P. M. when he went to bed.

He was down in the saloon of Mr. W. P. Barnes underneath where we live a part of that time, and up here a part of the time during these hours.

I remember I was up stairs at the front window looking down in front of the building at ten o'clock P. M. when Mr. Barnes closed the doors of his saloon at ten o'clock. I then saw Mr. Ward and another man standing out on the edge of the sidewalk by the side of the telephone post in front of the saloon. I do not know whether he came out of the saloon just as the doors closed or not, but about that time I saw him and this man out on the sidewalk.

Mr. Ward was drinking some that night and I kept watching him on the sidewalk thinking that he would come up stairs, but he did not come for some little time, and a little later some one put him inside the hall-way and locked the door, and then he came up stairs, and never left the building any more that night. I heard afterward that it was Mr. Barnes, who owns the saloon, that put him inside the hall-way and locked the hall door.

N. E. WARD.

Sworn to and subscribed before me on
this the 11th day of October, 1906.

E. J. NOLAN,
Notary Public Hamilton County, Tennessee.

(SEAL.)

"EXHIBIT D"

To the answer of Frank Ward in the case of the United States vs. John F. Shipp et al. No. 26 in the Supreme Court of the United States.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared before the undersigned authority, Walter D. Spradley, who being duly sworn, deposed as follows:

My place of business is at 1061 Market Street in the city of

Chattanooga, Tennessee. I remember the night that Ed Johnson was said to have been lynched on the 19th day of March, 1906.

I know Mr. Frank Ward, who is charged by the Government with participating in said lynching. My place of business is that of a clerk at 1061 Market Street, Chattanooga, and on the night of said lynching Mr. Deitch, my employer, was off duty and I had to stay on duty and work until 11 o'clock that night. I work for Mr. Deitch and usually get off from work at 7 o'clock in the evening. Mr. Deitch runs a restaurant.

But on this evening and night I had to work until 11 o'clock P. M. and Mr. Ward came into our restaurant four or five times.

I remember that he was in the restaurant about half past nine, and again about a quarter of ten o'clock P. M.

He was considerably intoxicated that night and was in no condition to have gone to the lynching. I know him well and can not be mistaken about his being there. I put him out at the door of the restaurant and told him to go home about twenty-five minutes after ten o'clock that night. The saloons all close at ten o'clock and I know that it was a few minutes after that when I put him out, and I told Mr. Ward the saloons were all closed and that he could not get anything more to drink and for him to go home and go to bed.

WALTER D. SPRADLEY.

Sworn to and subscribed before me on
this the 20th day of September, 1906.

JOHN A. HOOD,
Notary Public Hamilton County, Tennessee.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. MCKENNEY,
Clerk.

~~No. 18 Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA, complainants.
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 5 Orig.
O. T. 1907

ANSWER OF BART JUSTICE, ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

Answer of Bart Justice to the information filed by Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of the Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said Information or any or either of them, or with any other person or persons to break

and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

Defendant left his place of employment, the shops of the United States Pipe and Foundry Company about 4:30 o'clock P. M. of said date, and went to his home in St. Elmo, Tenn. Defendant's home is about four miles from the jail of Hamilton County.

About 7:30 o'clock P. M. of said date, defendant in company with his wife and daughter went to the home of one of his neighbors, Jim James, and remained there until about 10:30 o'clock P. M. At that time defendant returned to his home and knew nothing of the lynching of Ed. Johnson until the following morning, when he went to his work.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this Honorable Court or to prevent this Court from hearing the appeal

of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

BART JUSTICE.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared Bart Justice and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

BART JUSTICE.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. McKENNEY,
Clerk.

~~No. 12 Original~~

In the Supreme Court of the United States.

~~OCTOBER TERM, 1906.~~

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 5 Orig.
O. T. 1907

ANSWER OF ALFRED HANDMAN, ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

Answer of Alfred Handman to the Information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for contempt of this Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said Information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of

taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

At that time defendant was at the saloon of Ransom & Co., on Market street, in the City of Chattanooga, where he had gone about 8 o'clock P. M. to meet some friends. He met, among others, Messrs. Bill Hodgson, Dick Pooler and John Kean. By an ordinance of the City of Chattanooga, all saloons are required to close at the hour of 10 o'clock. He remained at said saloon until the closing thereof at 10 o'clock P. M. After leaving said saloon defendant went immediately to Fire Hall No. 1, on Carter street, in said City of Chattanooga, and there met the night watchman, Mr. Henry Gunther, who told him of the lynching of Ed. Johnson. He left the Fire Hall about 10:30 o'clock P. M., and went to his bed at the home of Mrs. Kelly O'Rear, on Gillespie street.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this Hon-

orable Court or to prevent this Court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

ALFRED HANDMAN.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared Alfred Handman and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

ALFRED HANDMAN.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. MCKENNEY,
Clerk.

~~No. 12 Original.~~

In the Supreme Court of the United States.

~~OCTOBER TERM, 1906.~~

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 5 Orig.
O. T. 1907

ANSWER OF CLAUDE POWELL, ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

Answer of Claude Powell to the Information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said Information or any or either of them, or with any other person or persons to break

and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

About 7:30 o'clock P. M. of said date, defendant left his place of business and went to the place of business of one Richard Averitt, on Eighth street, in the City of Chattanooga. There he met Patrick Kuntz and was with him at said Averitt's and on Eighth and Ninth streets in said city until after the hour of 10:30 o'clock P. M. About 10:30 o'clock P. M. of said date, defendant started to his home, and on the corner of Ninth and Market streets met an acquaintance, one Chris Mattell, who told him that Ed. Johnson had been taken from the jail and hanged. This was the first information defendant had of the mob or the lynching and murdering of Ed. Johnson.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this Honorable Court or to prevent this Court from hearing the appeal

of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

CLAUDE POWELL.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared Claude Powell and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

CLAUDE POWELL.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. MCKENNEY,
Clerk.

~~No. 12 Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA, complainants.
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 5 Orig.
O. T. 1907

ANSWER OF JOHN JONES, ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

Answer of John Jones to the Information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said Information or any or either of them, or with any other person or persons to break

and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

At that time defendant was on Whiteside street, in South Chattanooga, being fully two miles from the Hamilton County jail. Defendant was in the saloon of Mr. E. L. Shepherd, on Whiteside street from the hour of about 9 o'clock P. M. until the saloon closed at 10 o'clock P. M., in pursuance of an ordinance of the City of Chattanooga, closing all saloons at that hour. After leaving the saloon defendant went to his home in South Chattanooga, and knew nothing of the lynching of Ed. Johnson until the following day.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this Honorable Court or to prevent this Court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

JOHN JONES.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared John Jones and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

JOHN JONES.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. MCKENNEY,
Clerk.

~~No. 12 Original.~~

In the Supreme Court of the United States.

~~October Term, 1906.~~

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 5 Orig.
O. T. 1907

ANSWER OF HENRY PAIGETT, ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

Answer of Henry Padgett to the Information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said Information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of

taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

At that time defendant was in the bar of the Stag Hotel on Market street, in Chattanooga, where he had been since 7 o'clock P. M. with some friends. He was with Messrs. Will George, Quincy Chambers, Dave M. Junkins, Tom Duckworth and the proprietor, Mr. A. L. Stanley. He remained in said bar until it was closed at 10 o'clock P. M., in pursuance of an ordinance of the City of Chattanooga, requiring all saloons to close at 10 o'clock P. M.

Defendant then went into the pool room of said Stag Hotel and remained there until near midnight, when he went to his home.

Defendant knew nothing of the mob nor the lynching of Ed. Johnson until the following morning.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this Hon-

orable Court or to prevent this Court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

HENRY PADGETT.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared Henry Padgett and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

HENRY PADGETT.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. MCKENNEY,
Clerk.

No. ~~12 Original.~~

In the Supreme Court of the United States.

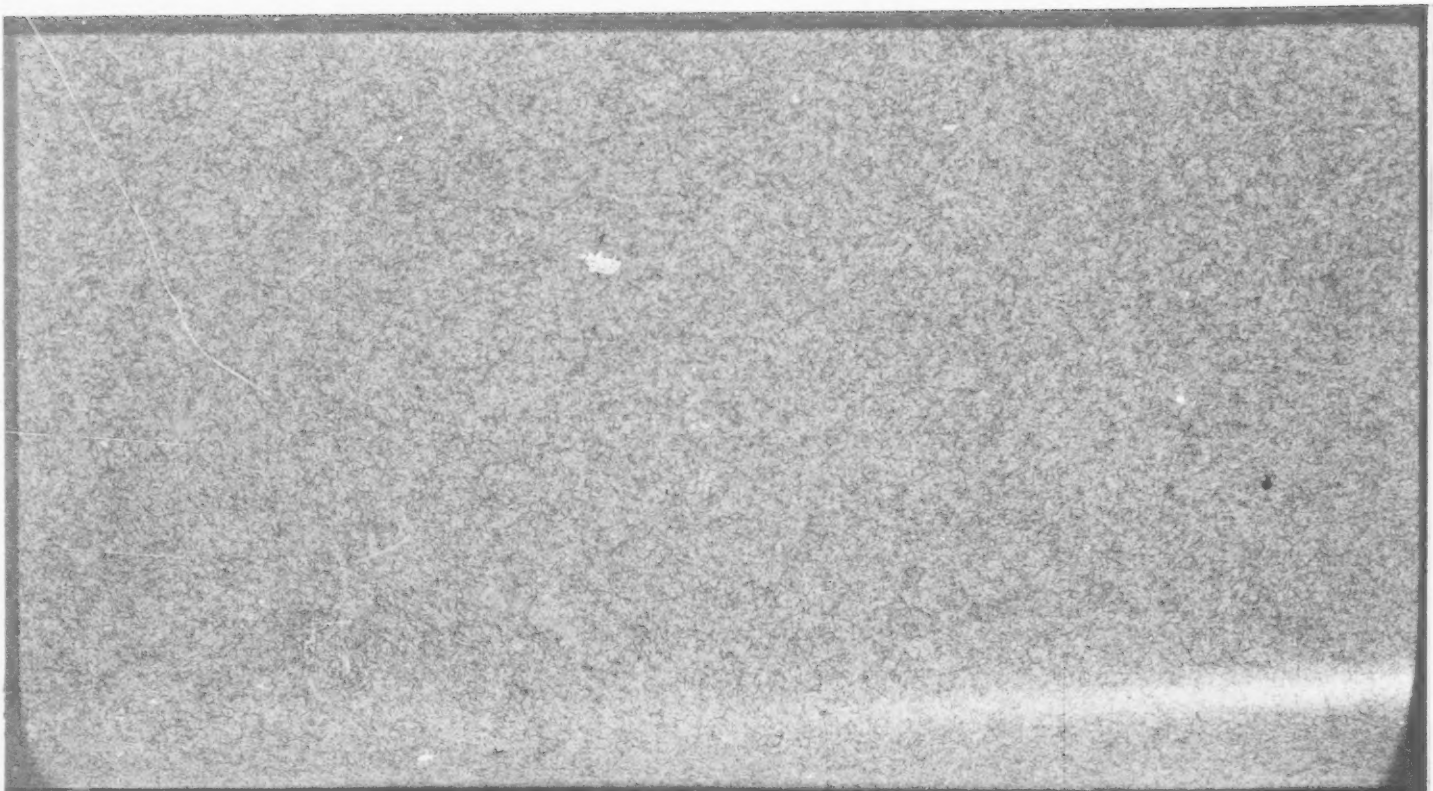
~~OCTOBER TERM, 1906.~~

THE UNITED STATES OF AMERICA, complainants.
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 4 Orig.
O. T. 1907

ANSWER OF NICK NOLAN, ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.



THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

Answer of Nick Nolan to the Information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate, or agree with the persons named in said Information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of

taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

At that time the defendant was at his place of business on Whiteside street, in South Chattanooga, about two miles from the Hamilton County jail. About 9:30 o'clock P. M. of said date he left his place of business and went to the saloon of John Nolan, in South Chattanooga, on Whiteside street. He remained at this saloon until 10 o'clock P. M., at which time the saloon was closed in pursuance of an ordinance of the City of Chattanooga requiring all saloons to close at 10 o'clock P. M. After the said saloon closed, defendant remained there or thereabouts with the proprietor, John Nolan, discussing a question of politics until about 10:30 o'clock P. M., at which time he went to his home on Aiken street, in South Chattanooga, where he remained until next morning.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this Hon-

orable Court or to prevent this Court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

NICK NOLAN.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared Nick Nolan and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

NICK NOLAN.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

FILED
OCT 15 1906
JAMES H. McKENNEY, Clerk.

FILE COPY.

~~No. 12 Original.~~

In the Supreme Court of the United States.

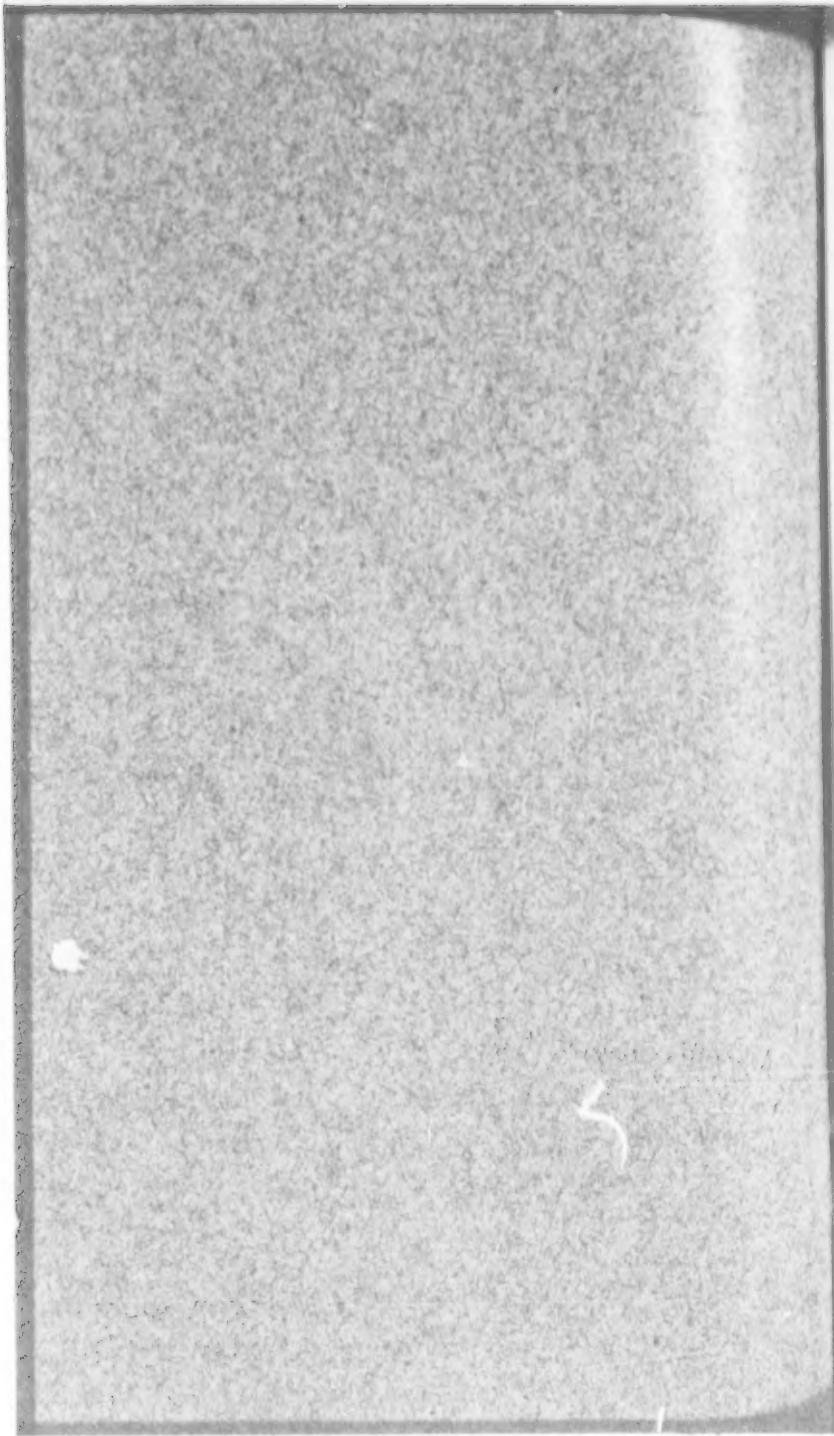
~~OCTOBER TERM, 1906.~~

THE UNITED STATES OF AMERICA, complainants,
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 4 Orig.
O. T. 1907

ANSWER OF WILLIAM MAYES, ONE OF THE DEFENDANTS.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys.



THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS.
Defendants.

Answer of William Mayes to the Information of Mr. Attorney General William H. Moody, filed in the above styled cause, and to the rule to show cause why he should not be punished as and for a contempt of this Honorable Court, issued May 28th, 1906.

By way of answer to the Information filed by the Attorney General and the rule granted by the Honorable Court, this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed. Johnson was taken from jail and lynched. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed. Johnson.

He did not at any time combine, conspire, confederate,

or agree with the persons named in said Information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed. Johnson to lynch and murder him. He did not participate with the mob that broke the jail or with the mob which lynched and murdered said Ed. Johnson. He did not know before hand that a mob was to be formed to lynch said Ed. Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Ed. Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed. Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of nine o'clock P. M., March 19, 1906.

At that time defendant was at his home on Poplar street, in Chattanooga, some distance from said jail. He retired about 7:30 o'clock P. M. on that evening, and remained at his home in bed until the following morning. He first learned of the mob and lynching of Ed. Johnson on the morning of March 20th, by telephone message from a friend.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this Honorable Court or to prevent this Court from hearing the appeal of the said Ed. Johnson. He has always entertained the very highest respect for this Honorable Court.

And now having fully answered the Information and rule so far as they effect him, he prays to be hence discharged and as in duty bound he will ever pray.

WILLIAM MAYES.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

STATE OF TENNESSEE,
HAMILTON COUNTY.

Personally appeared William Mayes and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

WILLIAM MAYES.

Subscribed and sworn to before me
this 8th day of October, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

[SEAL]

No. 4 Orig.

O. T. 1907

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

~~OCTOBER TERM, 1906.~~

~~No. 12, Original.~~

Office Supreme Court, U. S.
FILED.
OCT 15 1906
JAMES H. McKENNEY,
CLERK.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET AL.

ANSWER OF JOSEPH F. SHIPP AND OTHERS TO RULE TO SHOW CAUSE.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23451

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 26, Original.

THE UNITED STATES OF AMERICA

vs.

JOHN F. SHIPP ET AL.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now come Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. D. Taylor, Fred Frauley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, defendants, and, admitting their official characters as alleged in the information herein, but protesting that they have each and all never nor in anywise been lacking in obedience to the authority and respect for the dignity of this Honorable Court, for cause why the prayer of said information should not be granted as against them respectfully show:

I.

They first respectfully submit whether they or any of them ought to be interrupted in the discharge of their duties under the laws of Tennessee and put to trouble and expense by being required to answer before this Honorable Court the charges made against them in the information, because they are advised and believe, and so aver, that said charges, even if true, would be, and ought to be treated as, crimes

under the laws of Tennessee and contempt of the judicial authority thereof only, and not offenses against the authority or dignity of this Honorable Court, by reason of the following facts which are each and all established by the record herein:

The petition filed in the Circuit Court of the United States by Ed. Johnson for a writ of *habeas corpus,* mentioned in the information and, with the complete record of the proceedings thereon, made part of said information by reference, did not in any way or in any respect whatever allege a lack of jurisdiction in the court of the State of Tennessee in which said Johnson was convicted, either to try him on said charge or to adjudge the sentence imposed on him under which he was in custody of said Shipp, as sheriff, as stated in the information.

It is not averred in said petition that the alleged denials of rights secured to said Johnson by the Constitution of the United States, or any one of such denials, were made by virtue or under color of the constitution, laws, or rules of judicial practice of the State of Tennessee. On the contrary it appears from said petition that each and every of such alleged denials of right was, and is charged as being, due to the individual action of officials and other citizens of said state in violation of their duties under the constitution and laws thereof.

And these defendants are advised and believe, and so aver, that according to the repeated and uniform decisions of this Honorable Court the Circuit Court of the United States, in which said petition for *habeas corpus* was filed, had no right or authority whatever to inquire into any of the matters alleged therein, but that the same were cognizable only by the Supreme Court of Tennessee, which, as shown by the record herein, had full power and authority under the constitution and laws of said State, properly to deal with and dispose of each and every complaint made in said petition with reference to the indictment, trial and sentence of said Johnson. So that said petition for a writ of *habeas corpus* was, on the

face thereof, merely an attempt on the part of said Johnson to obtain from the Circuit Court of the United States instead of from the Supreme Court of Tennessee a review of said proceedings for alleged errors therein.

Said record, which contains all the evidence offered by either party in said circuit court of the United States, shows that each and all the allegations of said petition for a writ of *habeas corpus* concerning the denial of rights to said Johnson by said criminal court of Tennessee, were both false and unfounded.

There was no proof whatever that he was denied the aid of counsel; on the contrary it appears that, as he was unable to employ counsel, said criminal court appointed three lawyers of high standing to conduct his defense, and that they did so, as he himself admits, with ability, fidelity and zeal.

There was no proof whatever that said Johnson ever made or had any ground for objection to the selection or character of the juries which indicted and tried him, or of either of them. On the contrary it appears that his counsel forbore to make such objection on learning the facts.

There was no proof whatever that his attorneys were denied the right to apply for a change of venue or a continuance. On the contrary, it appears that they forbore to make application therefor, and that the time for said trial, as originally fixed by the court, was postponed by the consent of counsel for both parties, and that the trial was had at the time so agreed on.

There was no evidence whatever that his trial was not public, or that any of his relatives or friends were prevented from attending the same. On the contrary the proof shows that precautions were merely taken, at the request of his own counsel, to prevent the attendance of disorderly persons only; that such precautions were withdrawn when the first day of the trial showed them to be needless, and that during each and all of the three days the trial lasted there was a large attendance of the public.

There was no proof whatever that he was compelled to give evidence against himself. On the contrary, it appears that he rose, without any objection by himself or his counsel, when requested by a juror, in order to afford the girl he was charged with assaulting a better view; and that the exclamation of a juror, which occurred after the testimony had all been given, was treated by all, including the prisoner and his counsel, as the effect of the proof on an emotional nature, not as evidence that the juror was not impartial when accepted and sworn, and consequently nothing was said or done by the prisoner's counsel with reference to such occurrence, although they had full opportunity.

There was no proof whatever that when new counsel took up his case after his conviction they were denied the right to file a motion for a new trial, or to present a bill of exceptions, or to appeal to the Supreme Court of Tennessee. On the contrary it appears that no motion for a new trial was presented until after the time allowed for such motions by the reasonable and long-established rules and practice of the court had expired, although said counsel had ample time to prepare and file the same before such expiration; and that said counsel took no steps whatever towards preparing or presenting a bill of exceptions or taking an appeal, although the court remained in session for an entire week after the conviction of said Johnson and for five consecutive days after said counsel first appeared.

By reason of the foregoing facts appearing undisputed on the record herein, these defendants are advised and believe, and so aver, that said petition for a writ of *habeas corpus* was not an appeal in good faith to the power and authority vested by the constitution and laws of the United States in said Circuit Court; that said Circuit Court of the United States had no right or authority to entertain said petition and thereby interfere with the proceedings had and taken by the judicial authority of the State of Tennessee; and that consequently the order of said Circuit Court dis-

missing said petition was not appealable to this honorable court under the decisions and rules of practice thereof and the constitution and laws of the United States.

They, therefore, humbly pray the consideration and judgment of the court in the premises and that said information be dismissed as against them.

II.

If and in case the court shall find and decide the foregoing cause shown to be insufficient, then these defendants, as further cause why they and each of them should not be punished as for contempt of this Honorable Court, as prayed in said information, severally and collectively plead and say, that the charges made against them and each of them respectively in said information are not true, and to each and every of said charges, that they are not guilty.

Wherefore these defendants each and all most humbly pray that the rule herein issued against them be discharged.

JOSEPH F. SHIPP.
FRANK JONES.
MATT L. GALLOWAY.
C. A. BAKER.
THOMAS B. TAYLOR.
GEORGE W. BROWN.
JEREMIAH GIBSON.
FRED FAULEY.
MARION PERKINS.
JOSEPH C. CLARK.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendants.

STATE OF TENNESSEE, *County of Hamilton, ss:*

Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. D. Taylor, Fred Fauley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, the defendants above named, being first duly sworn, each severally deposes and says that all and singular the statements made in the foregoing plea and answer are true, and that such thereof as are made on information and belief he verily believes to be true.

JOSEPH F. SHIPP.
FRANK JONES.
MATT L. GALLOWAY.
C. A. BAKER.
THOMAS B. TAYLOR.
GEORGE W. BROWN.
JEREMIAH GIBSON.
FRED FAULEY.
MARION PERKINS.
JOSEPH C. CLARK.

Sworn to before me and subscribed in my presence this 12th day of October, A. D. 1906.

W. F. CHAMLEE,
[NOTARIAL SEAL.] *Notary Public.*

[Endorsed:] Supreme Court U. S., October term, 1906. Term No. 12, original. The United States of America, compl't, *vs.* John F. Shipp *et al.* Answer of John F. Shipp and other defendants showing cause. Judson Harmon, Clift & Cooke, Robert Pritchard, attorneys for defendants. Filed Oct. 15, 1906.

FILE COPY.

No. 4 Orig.
O. T. 1907

[redacted]

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States.

[redacted]

THE UNITED STATES OF AMERICA,
Complainants.

vs.

JOHN F. SHIPP AND OTHERS.
Defendants.

No. 4 Orig.
O. T. 1907

ANSWER OF S. J. CARTWRIGHT,
ONE OF THE DEFENDANTS.

SHUMATE & MADDOX,
JOHN H. EARLY,
Attorneys for Defendant.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.
No. 26. Original.

Now comes A. J. Cartwright, one of the defendants in the above styled cause, and for separate answer to the information filed against him and others in the Supreme Court of the United States of America on the 25th day of May, 1906, as well as to the rule to show cause why he should not be punished as and for contempt of said Honorable Court, issued on the 28th day of May, 1906, says:

The said A. J. Cartwright respectively submits to the Court that as to him the charges of combination, confederation and agreeing together with others to break and enter the jail of Hamilton County for the purpose of taking therefrom Ed Johnson and murdering him or for any other purpose is wholly without foundation in fact. The defendant respectively informs the Honorable Court that he combined with no one; he confederated with no one; he agreed with no one to take Ed Johnson from the jail of Hamilton County to kill and murder him, the said Ed Johnson. This defendant was not present at the jail on the night Ed Johnson was murdered; he knew nothing about the formation of any mob or organization of disorderly persons to murder said Johnson; he took no part in said murder, and then had and now has no sympathy for those who

did murder the said Johnson. The defendant respectfully informs the Court that he is a law-abiding citizen; that he is a man of family and that he, in connection with his brother, R. T. Cartwright, does a general merchandise business in a different part of the City of Chattanooga from the county jail and his business place is some three-fourths of a mile from the county bridge where Ed Johnson is said to have been murdered.

On the night of March 19th, 1906, the defendant then had pending in the City Council of the City of Chattanooga, an ordinance or resolution granting him the privilege of erecting in front of his stores on the corner of East Ninth and Peeples Streets in said City of Chattanooga, a balcony. The defendant went to the City Hall not later than 8 o'clock, and he believes as early as 7:30 o'clock, on said night of March 19th, 1906, for the purpose of securing the passage of said ordinance or resolution and remained there until as late as 9:15 o'clock and he believes as late as 9:35 o'clock. After securing the passage of said ordinance or resolution, the defendant went immediately to his home, except he went into the saloon of Joe Seagle who does business just across Peeples Street from this defendant and remained in said place only a few minutes until closing time of said saloon, which was 10 o'clock p. m.

The defendant then went up stairs over his store, where his family lived, and went to bed. He knew nothing of the organization of the mob, the storming of the jail or the murder of Ed Johnson until the following day, March 20th.

This defendant again protests his innocence of the charges made against him; he, in no way, participated in the lynching of Ed Johnson, either by word, act or sympathy; he is in no manner, by his conduct, responsible for the charges made against him.

This defendant has, at all times, stood for law and order in every community where he has lived; he revers the Honor and integrity of the courts of the land and has at all times manifested for them the highest respect, and has at no time manifested contempt for this Honorable Court.

And now having fully answered the information and rule to show cause, etc., in so far as he is affected, this defendant prays to be hence dismissed, and he will ever pray, etc.

A. J. CARTWRIGHT.

SHUMATE & MADDOX,
JOHN H. EARLY,
Attorneys for A. J. Cartwright.

STATE OF TENNESSEE,
COUNTY OF HAMILTON.

Now comes the defendant, A. J. Cartwright, and makes oath that the statements made in his foregoing answer are true in substance and in fact.

A. J. CARTWRIGHT.

Sworn to and subscribed before me,
10th day of October, 1906.
BOYD THOMPSON,
Notary Public.

FILE COPY.

No. 4 Orig.
O. T. 1907

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. McKENNEY,
Clerk.

[redacted]

In the Supreme Court of the United States.

[redacted]

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

No. 4 Orig.
O. T. 1907

Answer of R. T. Cartwright to the Information filed and rule issued against him and others in this cause.

SHUMATE & MADDOX,
JOHN H. EARLY,
Attorneys for Defendant.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

No. 26. Original.

And now comes the defendant R. T. Cartwright who is informed against as R. F. Cartwright and for separate answer to the information filed against him and others on the 25th day of May, 1906, and also to the rule to show cause why he should not be held as and for contempt issued against him on the 28th day of May, 1906, says:

That he has at no time manifested contempt for this Honorable Court. He denies that he willfully combined, confederated or agreed with the other defendants herein to break and enter the county jail of Hamilton County, Tennessee, for the purpose of taking Ed Johnson therefrom with the intent of lynching and murdering the said Ed Johnson. It is true that the said Ed Johnson was a prisoner in the Hamilton County jail and that he was taken therefrom by certain disorderly persons who took him to the Tennessee River bridge and lynched him, as this defendant verily believes.

This defendant respectively assures the Court that he had

no hand in and took no part in the murdering of Ed Johnson. This defendant and his brother A. J. Cartwright, do business about three-fourths of a mile from the County jail and about one mile from the County bridge, where Johnson was murdered. The defendant says that he was not at the County jail or the County bridge the night Ed Johnson was lynched; he knew nothing of the matter whatever until the following morn ing, March 20th. He confederated with no one; he agreed with no one to take Johnson from the jail and kill him. This defendant does not know many people in Hamilton County, Tennessee, as he has lived here only three years, and during that time he has been so closely confined to his place of business that he has formed the acquaintance of but few people outside of his business relations. He has taken but little if any interest in the affairs of Chattanooga outside his own private business. He further shows the Court that he is of a very retiring disposition. He seldom mingles in crowds sor seeks the association of many people. His life is almost wholly given to his business and to his family. The defendant stands for law and order at all times and under all circumstances. He entertains the highest respect for American institutions; he believes in the honor and integrity of the courts of the country and possesses for them the highest esteem and he especially reveres this Honorable Court.

On the night of March 19, 1906, the defendant was at his place of business in the City of Chattanooga at 732-734 East Ninth Street. His brother, A. J. Cartwright, was at the City Council on that night seeking the passage of an ordinance permitting the erection of a balcony in front of their new stores then in course of construction. This put double duty on the defendant and he remained at the store till about 9:30 o'clock, p. m., when he went up stairs and soon thereafter retired for

the night, and knew nothing of the lynching of Johnson until the following day.

This defendant again reiterates his innocence of the charges preferred against him in the information. He took no part in said lynching; he did not counsel such act of lawlessness, and he has expressed no sympathy for those who did murder the said Ed Johnson.

And now having fully answered the information and the rule to show cause, etc., in so far as he is affected, this defendant prays to be hence dismissed, and he will ever pray, etc.

R. T. CARTWRIGHT.

SHUMATE & MADDOX,
JOHN H. EARLY,
Attorneys for R. T. Cartwright.

STATE OF TENNESSEE,
COUNTY OF HAMILTON.

Now comes the defendant R. T. Cartwright and makes oath that the statement made in his foregoing answer are true in substance and in fact.

R. T. CARTWRIGHT.

Sworn to and subscribed before me,
10th day of October, 1906.
BOYD THOMPSON,
Notary Public.

FILE COPY.

No. 4 Orig.
O. T. 1907

Office Supreme Court U. S.
FILED
OCT 15 1906
JAMES H. McKENNEY,
Clerk.

[redacted]

In the Supreme Court of the United States.

[redacted]

THE UNITED STATES OF AMERICA, complainant.
vs.
JOHN F. SHIPP AND OTHERS, defendants.

No. 4 Orig.
O. T. 1907

SEPARATE ANSWER OF WILLIAM MARQUETTE.

JOE V. WILLIAMS.
Attorney for Defendant.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
JOHN F. SHIPP AND OTHERS,
Defendants.

No 12. Original.

The Separate Answer of William Marquette to the Information filed against him, and others, in the above Cause.

The defendant, for answer to such parts and so much of said Information as he is advised it is necessary or material for him to answer, says:

I.

That on information and belief he admits that on, or about, the 11th day of February, 1906, one Ed Johnson, a citizen of the United States and a resident and citizen of the State of Tennessee, and a colored person of African descent, was convicted of the crime of rape in the Criminal Court of Hamilton County, and said Court thereupon sentenced the said Ed Johnson to suffer the penalty of death, as alleged in paragraph 1 of said Information.

II.

That on information and belief he admits that a petition for a writ of habeas corpus was duly presented to the United

States Circuit Court for the Northern Division of the Eastern District of Tennessee, but defendant does not know whether it was alleged in said petition that the said Ed Johnson had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution. This defendant newer saw said petition, and, while the same or parts thereof may have been published in the newspapers, he has no recollection as to the allegations the same contained.

On information and belief it is admitted that on or about the 10th day of March, 1906, the application of the said Ed Johnson for a writ of habeas corpus came on for hearing before the said United States Circuit Court for the Eastern District of Tennessee upon the petition, return, answer and replication, and upon the testimony of witnesses given orally in open court, and after argument of counsel, the said Circuit Court ordered that said petition be dismissed, and that the writ of habeas corpus prayed for in said petition be denied. The defendant was not present on said hearing, and only knows as to what occurred by newspaper reports. Defendant does not remember of having seen any publication to the effect that the said Circuit Court of the United States remanded the petitioner to the custody of the sheriff of Hamilton County, in the State of Tennessee, to be detained by the said sheriff in his custody for the period of ten days in which to enable said petitioner to prosecute an appeal from said order, should he be so advised and should an appeal lie from said order, and in default of the prosecution of an appeal within said time to be then further proceeded with by the Court of the State of Tennessee under its sentence. While defendant has no recollection on this subject, he is advised that such order was in substance so made by said Court.

On information and belief it is admitted that on, or about, the 17th day of March, 1906, an application was duly presented by the said Ed Johnson to the Hon. John M. Harlan, an

Associate Justice of the Supreme Court of the United States, assigned to the Sixth Circuit, asking that an appeal be allowed to the Supreme Court of the United States from the judgment rendered in the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee on March 10th, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus, and which said appeal was on the same day duly allowed by the said Mr. Justice Harlan; that thereafter, to-wit: on the 19th day of March, 1906, a motion was made in the Supreme Court of the United States for an order allowing an appeal to the Supreme Court of the United States from the judgment of the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee rendered on the 10th day of March, 1906, denying his, the said Ed Johnson's, application for a writ of habeas corpus which motion was thereupon granted by the said Supreme Court. This admission is made solely upon the information received by the defendant after the lynching of the said Ed Johnson. That at the time of the lynching of the said Ed Johnson, defendant did not know that an appeal had been granted by Mr. Justice Harlan of the said Supreme Court, or by said Supreme Court, and this information did not come to him until he saw a publication to this effect in the Chattanooga Times the morning after the lynching of the said Ed Johnson. Defendant is now advised that publication was made to that effect in the Chattanooga Evening News on the evening before the lynching of said Ed Johnson, but for some reason, defendant did not see said paper on said evening and had no information on the subject referred to, until the following morning, as before stated. Defendant, at the time of the lynching of the said Ed Johnson, did not know what order the said Supreme Court of the United States had made and entered in reference to the petition of the said Ed Johnson. The defendant never had any information on this subject until a copy of the Information filed in his cause was served upon him.

III.

Defendant did not, at the time of the lynching of the said Ed Johnson, know what notice had been given by the Clerk of the Supreme Court of the United States to defendant John F. Shipp, the sheriff of Hamilton County, as to the making and entering of said order in relation to the petition of the said Ed Johnson. As before stated, defendant did not see the evening paper on the day of the lynching of the said Ed Johnson, and, consequently, did not see what said paper contained in reference thereto, and this defendant had no other information on the subject. Defendant did see the Chattanooga Times on the morning after the lynching of the said Ed Johnson, and whatever said paper may have contained on this subject he no doubt read, but he has no distinct recollection as to what said paper contained on this subject, and, in fact, the first definite information this defendant received on the subject of the appeal to the Supreme Court of the United States and the order made in relation thereto, and the notice given to the said John F. Shipp, was when a copy of the Information filed in this cause was served upon the defendant. Defendant is not a lawyer, and had taken no particular interest in said matter, and did not know, except in a most general way, what had been done in relation to the said Ed Johnson case.

IV.

On information and belief it is admitted that said John F. Shipp, at the time mentioned in said Information, was the duly elected, qualified and acting sheriff of Hamilton County, in the State of Tennessee, and as such sheriff had and exercised full charge and control of the county jail, in the City of Chattanooga, in said county, and was the legal custodian under the laws of the State of Tennessee of all persons duly committed in said county, under the laws of said State, to confinement and imprisonment within said jail. Defendant has no personal knowledge as to who were the deputy sheriffs of said county at said time, but on information and belief it is ad-

mitted that Matthew Galloway, C. A. Baker, Fred Frawley, and probably others, named in said Information, were deputy sheriffs at the time aforesaid. But defendant has no definite information on this subject, and his only knowledge on the subject is hearsay. Defendant does not know what information the said sheriff and his deputies, or any of them may have received before or after the hour of 6 o'clock on the evening of the 19th day of March, 1906, as to the action taken by the said Supreme Court of the United States, with respect to the appeal of the said Ed Johnson. Defendant never at any time had any talk with the said sheriff or any of his deputies on this subject, and has no information directly or indirectly in relation thereto. Defendant does not know by whose orders the said Ed Johnson was held and restrained of his liberty in the jail of said county at the time aforesaid, except his general information to the effect that the said Ed Johnson had previously been convicted of the crime of rape and was being held on such charge. Whether said Ed Johnson at said time was being held and confined by virtue of an order made by the Supreme Court of the United States, he does not know, and did not at the time know, this defendant having no information on the subject, except as hereinbefore set out.

Defendant does not know what information, if any, said sheriff and his deputies received to the effect that an attempt would be made on the evening of the said 19th day of March, or early in the morning of the following day, by a mob composed of a large number of armed men to force and enter into the said county jail for the purpose of taking therefrom by violence and unlawful means the said Ed Johnson and putting him to death. If said sheriff and his deputies, or any of them, had any such knowledge on the subject, it is wholly unknown to this defendant. As to what the said sheriff may have done with respect to withdrawing from said jail early in the evening of the day aforesaid the usual and customary guard, and leaving in charge thereof only the night jailer, to-wit, Deputy Sheriff Jeremiah Gibson, defendant is not advised, and did not at the time have, and has not now, any information on the

subject, except what is contained in the Information filed in this cause. Said defendant never had any conversation with said sheriff, or any of his deputies, in relation thereto, and he is wholly without personal information on the subject. If the said sheriff and his deputies, or any of them, entertained a purpose or disposition at said time to in any way assist a mob in carrying out its unlawful design and purpose to lynch the said Ed Johnson, this is wholly unknown to this defendant. At said time defendant did not know that any person or persons contemplated the mobbing or lynching of the said Ed Johnson, and the first information he had on the subject was at, or about, the time the lynching occurred, as will be hereafter more fully shown.

V.

It is most positively denied that this defendant wilfully, unlawfully and wrongfully combined, conspired, confederated and agreed with the said John F. Shipp and the other persons named in said Information, or any of them, or with any other person or persons, to break and enter the said county jail of Hamilton County, for the purpose of taking therefrom the person of the said Ed Johnson to lynch and murder him, with the intent then and there had and entertained by this defendant, or said other defendants, or any of them, to show their contempt and disregard for the order of this Honorable Court made, entered, issued and published in relation to the said Ed Johnson's appeal, and for the purpose of preventing this Honorable Court from hearing the appeal of the said Johnson allowed by said Court, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States. Defendant denies that he combined, conspired, confederated or agreed together with said other defendants, or any of them, for the purpose aforesaid, or otherwise. Defendant at no time, either on the day or the night of said lynching, or at any other time, in any manner, shape or form, combined or confederated with said defendants, or either of them, to do and perform the

acts alleged in said Information or for the purposes therein alleged. This defendant had nothing whatever to do with the mobbing or lynching of the said Ed Johnson, did not know that his lynching was contemplated until at or about the time he was being taken from said jail by a mob for such purpose. Defendant was not at said jail at said time, and does not know who were present or participated in said mob.

On information and belief it is admitted that on the evening of the said 19th day of March, 1906, a large number of persons did assemble in the vicinity of said county jail and that said Ed Johnson was unlawfully and wrongfully taken therefrom with force and violence, against his will, and hanged by the neck until he was dead. As to what said sheriff or said deputies, or any of them, had to do with said lynching, if anything, this defendant is not advised, and this defendant is wholly without information as to what particular persons composed said mob; he only knowing that he was not a participant in said mob, and was not present at said time.

VI.

This defendant, further answering said Information, states and shows to this Honorable Court, in detail, the following facts:

That on the day and the night of the lynching of the said Ed Johnson he was in a delicate state of health, and was at said time and had been for more than a month previous thereto, suffering from asthma; that previous to said time Dr. Cooper Holtzclaw had been treating him, the said defendant, for said disease, and about the hour of 7:30 o'clock or 8 o'clock on said evening he went to the office of the said Dr. Holtzclaw, at 213 East Eighth Street, in the City of Chattanooga, for the purpose of procuring treatment for same; that on defendant's arrival at said office he found the said Dr. Holtzclaw absent, making a call, and he thereupon entered into conversation with Drs. M. L. Crum and E. C. Johnson, who were then in said office, and continued to so converse with them until the arrival

of the said Dr. Holtzclaw, at or about the hour of 9 o'clock. On the arrival of the said Dr. Holtzclaw he remarked to the defendant that he had had no supper and desired the said defendant to wait until he ate his supper. This was accordingly done, and after said Holtzclaw finished his meal he called the defendant into his, the said Dr. Holtzclaw's private office, where they conferred together some fifteen or twenty minutes. After such consultation with the said Dr. Holtzclaw, he advised the defendant to have two certain prescriptions refilled, and for this purpose the said defendant, at or about the hour of 9 o'clock, left the office of the said Dr. Holtzclaw and went to the drug store of Robert J. Miller, at 121 West Ninth Street, where he had said prescriptions refilled. That after procuring the said prescriptions, said defendant started to his home, and in passing the restaurant of one W. D. Bowers, at 30 West Ninth Street, defendant stopped and bought of the said W. D. Bowers 10 cents worth of granulated sugar for the purpose of using the same in making a hot lemonade for himself on his arrival home. On leaving said restaurant he again started towards his home, and remembering that he desired to purchase some witch hazel, he stopped at Miller's Pharmacy, at the corner of Eighth Street and Georgia Avenue, and ordered and procured the same of one H. M. Allen, a clerk in said pharmacy. While waiting for the delivery of said witch hazel to him, he, the defendant, ordered a glass of coco cola at the fountain of said pharmacy, and was in the act of drinking the same when one Mr. Charles Karsten, an employee of the Chattanooga Times, came in and also ordered a glass of coco cola, and immediately upon so doing, said Karsten began telling this defendant that a report had reached the Times office to the effect that a mob had broken into the county jail and had taken the said Ed Johnson to the county bridge to hang him. This was about 10 o'clock. About this time the said witch hazel was delivered to defendant, and he walked out of said pharmacy to the curb of the street with the said Karsten, where they engaged in conversation for about ten minutes. The said defendant then parted with the said Charles Karsten and went

to the boarding house of himself and wife at 715½ Walnut Street, said place being only about 150 feet from the said Miller Pharmacy. On arriving home the said defendant took a dose of the medicine that he had procured at the drug store aforesaid, and as a consequence thereof, in some ten or fifteen minutes thereafter, he became very sick at the stomach and went to the toilet to vomit, which toilet is on the third floor of the said boarding house, the room of the said defendant being on the second floor. The said defendant remained in said toilet some thirty minutes, when one Robert S. Mastin, a young man boarding at the same place, passed said toilet and knocked on a door nearby, at the same time calling to some gentleman, whose name defendant does not now remember, to get up, that he had something to tell him, and after said gentleman answered, said Robert S. Mastin told said gentleman that he, the said Robert Mastin, had heard that the said Ed Johnson had been hanged on the county bridge. The defendant, being still in said toilet, called to the said Robert S. Mastin and had some conversation with him in relation to said hanging. This was about the hour of 11 o'clock. Thereupon the defendant went to his room, where he spent a sleepness night on account of his said asthmatic trouble. That on the following morning, after reading an account of the lynching in the Chattanooga Times, and of the damage done to the jail by said mob, the defendant, at about the hour of 8 o'clock, went to said jail, which is only a short distance from his said boarding house, for the purpose of seeing the condition of the jail, and on his arrival there he had a curiosity to see the cell or place from where the said Ed Johnson had been taken the night previous, and at said time there were several other persons present in addition to the defendant, and permission was asked of Mr. F. A. Frawley, the deputy sheriff then in charge, to go to see the place from which the said Johnson had been taken, which permission was granted. Thereupon Mr. J. G. Richardson, another deputy sheriff, was requested to show the defendant and some five or six other persons through the damaged quarters and cell occupied by the said Ed Johnson on the night previous. The said

defendant, and said other persons, then went with the said J. G. Richardson to said place, and said cell was then entered by said defendant and said other persons, or some of them, and after so entering, some of the parties commenced to pick up different articles in side of said cell, or room, and as defendant was leaving said cell, or room, some one asked him if he had any of the articles, to which he replied that he did not. Thereupon some boy of about the age of fifteen or sixteen years, whose name was then and still is unknown to the defendant, handed to this defendant two letters addressed to the said Ed Johnson, which letters the said defendant put in his pocket. The defendant then left the said jail and went to his place of business, at 211 West Eighth Street, and after arriving at his said place of business, which is but a short distance from the undertaking establishment where the body of the said Ed Johnson was, he, the said defendant, went to said undertaking establishment and viewed the body of the said Ed Johnson; and this defendant says that this was the first and only time that he ever saw Ed Johnson while in life, or after his death. After viewing said body, the defendant returned to his place of business, and while standing in the front door thereof, Mr. H. D. Rider, a building contractor in the City of Chattanooga, came by and entered into a conversation with defendant in relation to the lynching of the said Ed Johnson; that in said conversation the defendant told the said Rider of the visit of this defendant to the jail, and showed the said Rider the letters said boy had given him while at said jail. The defendant then and there gave to the said Rider one of said letters, which he took away with him, and the other was kept and retained by said defendant for some time thereafter.

The defendant says that out of this circumstance, probably, grew the suspicion that he, the defendant, had something to do with said lynching. But defendant again denies that he had any connection whatever with said lynching, but says he was at other and different places during and at the time the said Ed Johnson was being lynched, and further says that he did not know positively that the said Ed Johnson had been

lynched until he saw an account thereof in the Chattanooga Times on the following morning.

This defendant did not before said lynching aid, counsel, or in anywise advise any person, or persons, to lynch the said Ed Johnson, and this defendant did not then, and has not since, in anywise approved the act of said mob in lynching the said Ed Johnson.

Defendant is advised that said mob first made an attack on said jail for the purpose of lynching the said Johnson at, or about, the hour of 9 o'clock on the said 19th day of March, 1906, and that at, or about, the hour of 10 o'clock on said night, they took the said Ed Johnson from said jail and hung him on the county bridge nearly.

The defendant files herewith, and as a part hereof, several affidavits showing the whereabouts of said defendant at and during the time of said lynching; said affidavits being marked Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I" and "J." The affidavit of Dr. Holtzclaw is not herewith presented, for the reason that he is now, and has been for some time past, absent from the city.

The defendant, further answering, shows to the Court that he does now, and has always heretofore, entertained the highest regard and admiration for this Honorable Court, and that he did not, with respect to the said Ed Johnson lynching, or otherwise, directly or indirectly, show his contempt or disregard for the order of this Honorable Court, made and entered with respect to said Ed Johnson matter, and that he has in no wise prevented this Honorable Court from hearing the appeal of the said Ed Johnson.

This defendant has always endeavored to be o law-abiding citizen and has at all times cheerfully acquiesced in the decisions, orders and mandates of the courts of the country, and especially of this high and Honorable Court.

And the defendant, having fully answered said Information, now prays that this Honorable Court may order and adjudge that sufficient cause has been shown why this defendant

should not be punished as and for a contempt of this Honorable Court, that said Information be dismissed as to him, and that he go hence acquit, and this defendant will ever pray, etc.

WILLIAM MARQUETTE.

JOE V. WILLIAMS,
Attorney for Defendant.

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

WILLIAM MARQUETTE, being first duly sworn, deposes and says that he is one of the defendants in the foregoing case, and that he has read and knows the contents of the foregoing answer, and that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

(SEAL.) WILLIAM MARQUETTE.

Subscribed and sworn to before me,
this, 8th day of October, 1906.

R. M. WATKINS,
Deputy Clerk U. S. Circuit Court.

Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I" and "J," to the Answer of William Marquette in the Case of the United States of America, complainant, vs. John F. Shipp and others, defendants, No. 12, Original, in the Supreme Court of the United States.

EXHIBIT "A."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

M. L. Crum, being first duly sworn, deposes and says that he is a physician in the city of Chattanooga, Hamilton County, Tennessee, and that he is now and has been for some time past the house physician in charge at the Erlanger Hospital in said city. That on and prior to March 19th, 1906, he was in the habit and custom of going to the office of Dr. Cooper Holtzclaw at night for the purpose of study; and affiant remembers distinctly of being at the office of the said Dr. Cooper Holtzclaw on the night of March 19th, 1906, from about 7 P. M. to 10 P. M., and affiant remembers that Mr. William Marquette called at said office between the hours of 8 P. M., and 9 P. M. on said night for the purpose of procuring treatment from the said Dr. Holtzclaw. That at said time the said Dr. Holtzclaw was not present, but was making a call, and did not return to his office till about 9 o'clock. Affiant and said Marquette engaged in conversation until the said Dr. Holtzclaw came, at which time the said Marquette went into the private office of the said Dr. Holtzclaw for consultation. Affiant states that the said Marquette remained at said office until the hour of 9 or 9:30 P. M., when he left the same. Affiant distinctly recalls the date of the visit of the said Marquette to said office for the

reason that on that date this affiant presented to the said Dr. Holtzclaw a book and inscribed therein the name and date of said presentation.

(SEAL.) M. L. CRUM.

Sworn to and subscribed before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "B."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

E. C. Johnston, being first duly sworn, makes oath that he is a practicing physician in the city of Chattanooga and has been for some time past, and that he is now, and was, on the 19th day of March, 1906, located in the office of Dr. Cooper Holtzclaw in said city.

Affiant distinctly remembers that Mr. William Marquette came to the office of the said Dr. Holtzclaw somewhere between the hours of 8 and 9 o'clock on the evening of the 19th day of March, 1906, for the purpose of procuring treatment from the said Dr. Holtzclaw. At the time of the arrival of the said Marquette, he, the said Dr. Holtzclaw, was absent from the office, and did not come until late and the said Marquette waited until he arrived. This affiant left the office of the said Dr. Cooper Holtzclaw about 9 o'clock on said evening, at which time the said Marquette was still in conversation with the said Dr. Holtzclaw.

(SEAL.) E. C. JOHNSTON.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "C."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

L. B. Coleman, being first duly sworn, makes oath that on the night of March 19th, 1906, he was a prescription clerk in the drug store of Robert J. Miller in the city of Chattanooga, and that on said night he distinctly remembers the re-filling of two prescriptions for William Marquette, and that the said Marquette waited for the re-filling of the same. This affiant has no distinct recollection as to the particular hour the said Marquette was at said drug store, except that he knows that it was some time after dark and in the night time. This affiant and the said Marquette engaged in quite a lengthy conversation in relation to the relative value of the prescriptions he was getting re-filled, and perhaps talked on other subjects. The prescriptions referred to had previously been given to the said Marquette by Dr. Cooper Holtzclaw.

(SEAL.) L. B. COLEMAN.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "D."

HAMILTON COUNTY. }
STATE OF TENNESSEE, } ss.

W. D. Bowers, being first duly sworn, makes oath that on the night of March 19th, 1906, he was engaged in running a restaurant in the city of Chattanooga, Hamilton County, Ten-

nessee. That on the said night, somewhere between the hours of 8:30 P. M. and 9:30 P. M. Mr. William Marquette came into the restaurant of this affiant and purchased some sugar from him and had said sugar charged to said Wlliam Marquette.

Affiant remembers that said Marquette was in his place of busness at said time, because the matter of the lynching of one Ed Johnson was discussed, and because the said Marquette had the sugar, procured at that time, charged to him under the date of March 19th, 1906.

(SEAL.) W. D. BOWERS.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "E."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

H. M. Allen, being first duly sworn, deposes and says that on the night of March 19th, 1906, he was a clerk in the Miller Pharmacy in the city of Chattanooga, and that on said night William Marquette came into said Pharmacy and procured from him, this affiant, some package or article, the name of which he does not remember. This affiant remembers that the said William Marquette and another gentleman, whose name he understands was Mr. Charles Karston, were sitting at the fountain drinking and at the same time discussing the mob. This affiant asked them what the result was, and either the said Marquette or the said Karston remarked that they understood the mob had gone to the county bridge with said Ed Johnson

to hang him. Some time previous to this conversation, affiant had heard that a mob was at the jail breaking doors down for the purpose of hanging the said Ed Johnson. This conversation of affiant, with said Marquette and Karston occurred about the hour of 10 o'clock on said nght, as near as this affiant can remember.

(SEAL.) H. M. ALLEN.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "F."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

Charles Karston, being first duly sworn, deposes and says that on the night of March 19th, 1906, and the night of the lynching of Ed Johnson, he was, and for some time prior thereto had been in the employ of the Chattanooga Times in the city of Chattanooga, as machinist. That at about the hour of 10 o'clock on said 19th day of March, 1906, he was advised that a telephone message had been received at the office of the said Chattanooga Times to the effect that a mob had congregated at the county jail in said city for the purpose of mobbing one Ed Johnson. That shortly after said message was received, or said to have been received, this affiant left the office of the said Chattanooga Times and walked across the street to Miller's Pharmacy at the corner of Eighth Street and Georgia Avenue and went to the fountain and called for a glass of Coca-Cola. That at the time this affiant entered said Pharmacy, William Marquette was sitting there near the fountain on a stool and

this affiant remarked to the said Marquette that "a mob has gone up after the nigger," and this affiant and the said Marquette sat there and talked the matter over and drank the Coca-Cola ordered, and after doing this, affiant and the said Marquette walked out on the sidewalk where they stood on the curbing and talked for quite a little while. When their conversation ended, affiant left to return to his work in the office of the said Chattanooga Times, and the said Marquette walked on up the street and this was the last affiant saw of the said Marquette that night. This affiant is well acquainted with the said Marquette, and cannot be mistaken as to the fact of seeing him at the time and place above mentioned, and of having the conversation referred to. When this affiant and the said Marquette parted on said street, it was about the hour of 10 P. M.

(SEAL.) CHARLES KARSTON.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "G."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

Robert S. Mastin, being first duly sworn, deposes and says that on the night of March 19th, 1906, he was boarding at the same place where William Marquette and his wife boarded. Affiant had been to the opera house on that night, and returned to his boarding house at about 11 o'clock, and while on his way so returning, he was told by some one that one Ed Johnson had been hung, and on the arrival of affiant to his said boarding house he went to the room of Mr. Frank Povolisky. On returning to his room William Marquette called or spoke to

affiant from the toilet on said third floor, and asked him if they (meaning the mob) had gotten said Ed Johnson from the jail. Affiant told him, the said Marquette, that they had gotten said Ed Johnson and gone to the county bridge to hang him.

(SEAL.) ROBERT S. MASTIN.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "H."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

F. A. Frawley, being first duly sworn, deposes and says that on the morning following the night of the lynching of one Ed Johnson, in the city of Chattanooga, Hamilton County, Tennessee, he was at the jail of said county. Affiant says that on said morning William Marquette visited said jail, and requested permission to visit the cell previously occupied by the said Ed Johnson. Affiant, thereupon, requested Mr. J. G. Richardson, who was also a deputy sheriff, and then acting as day jailer, to conduct said Marquette to said cell, which he did, along with several other persons who came in about that time. The said Marquette spent some time, probably an hour, about the jail and then left.

(SEAL.) F. A. FRAWLEY.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "I."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

J. G. Richardson, being first duly sworn, deposes and says that he was acting as day jailer at the County Jail of Hamilton County, Tennessee, on the morning after the lynching of one Ed Johnson, and that on said morning William Marquette and several other persons came to said jail and wanted to go up stairs and see the cell that the said Ed Johnson had occupied and he was requested by one F. A. Frawley, a deputy sheriff, to take them up and turn them into the cell, which affiant did. After the said William Marquette and other persons had been turned into said cell, affiant saw some one hand to the said William Marquette some letters that he had found in said cell and the said William Marquette took the same. Said letters were addressed to the said Ed Johnson. There was one boy and two or three men with said Marquette and the cage was full, or almost full, when affiant turned them in. This occurred on the morning after the said lynching, and was at or about the hour of 9 o'clock.

(SEAL.) J. G. RICHARDSON.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMLEE,
Notary Public.

EXHIBIT "J."

STATE OF TENNESSEE, }
HAMILTON COUNTY. } ss.

H. D. Rider, being first duly sworn, deposes and says that he is a building contractor in the city of Chattanooga, being a

member of the firm of Cox & Rider, and that on the morning after the lynching of the one Ed Johnson in the city of Chattanooga, Hamilton County, Tennessee, he happened to pass by the place of business of William Marquette, and entered into a conversation with the said Marquette in relation to the mobbing of the said Ed Johnson, and the said William Marquette then produced two letters addressed to the said Ed Johnson which the said Marquette stated he had procured, or had handed to him, at the county jail that morning, and, thereupon, one of said letters was handed to this affiant, which he received and took away with him, and the other letter was retained by the said William Marquette.

(SEAL.) H. D. RIDER.

Subscribed and sworn to before me,
this October 6, 1906.

W. F. CHAMBLEE,
Notary Public.

FILE COPY.

Office Supreme Court, U. S.
FILED.
DEC 3 1906
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

[redacted]

No. 5 Orig.
O. T. 1907

THE UNITED STATES OF AMERICA, *Complainants*,

vs.

JOHN F. SHIPP AND OTHERS, *Defendants*.

BRIEF FOR J. F. SHIPP, SHERIFF, AND HIS DEPUTIES, DEFENDANTS, ON PRELIMINARY QUESTIONS.

JUDSON HARMON,
For J. F. Shipp, Sheriff, et al.

CLIFT & COOKE,
ROBERT PRITCHARD,
Of Counsel.

THE BARCLAY PRINTING CO., Strobridge Building, 108-118 W. Canal St., Cincinnati, O.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA, *Complainants*,

vs.

JOHN F. SHIPP AND OTHERS, *Defendants*.

BRIEF FOR J. F. SHIPP, SHERIFF, AND HIS DEPUTIES, DEFENDANTS, ON PRELIMINARY QUESTIONS.

STATEMENT.

The charge in the information is this:

One Ed Johnson, having been convicted and sentenced by a court of Tennessee, whose jurisdiction over the accused and the offense is not questioned, petitioned the United States Circuit Court for that State for a writ of habeas corpus on the ground, among others, that "he had been denied a trial by a fair and impartial jury, and had been denied the aid of counsel in violation of the fifth and sixth amendments to the Federal Constitution, and that said petitioner was also denied rights secured to him under the fourteenth amendment to the Federal Constitution." (Inf. p. 2.)

At the hearing upon the petition, answer and oral testi-

mony, the petition was dismissed. Thereupon, before the day fixed in the sentence for the infliction of the penalty, Johnson secured from one of the Justices of this Court and also from the Court the allowance of an appeal from said judgment of the Circuit Court. The order allowing the appeal provided that "the custody of said appellant be retained pending this appeal." (Inf. 2-4.)

Defendant Shipp, the sheriff in charge of said Johnson, and his deputies, being advised of the allowance of said appeal and said order and having reason to believe that an attempt would be made by a mob to take said Johnson and put him to death, caused the customary guard to be withdrawn from the jail where said Johnson was confined, in order to make less difficult and dangerous the execution of such design, and also conspired and confederated with the other defendants unlawfully to take and lynch said Johnson, which was done.

All this was "for the purpose of preventing this honorable court from hearing the appeal of the said Ed Johnson, allowed by this court, as aforesaid, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States," "and in order to show their contempt and disregard for the said order of this honorable court." (Inf. 7, 8, 10.)

The first paragraph of the answer of said Shipp, sheriff, and his deputies to the rule to show cause why they should not be punished for contempt is, in substance, that neither on the averments of the petition of said Johnson for a writ of habeas corpus nor on the proof taken on the hearing was his case one of which said Circuit Court of the United States had jurisdiction, nor one which was appealable to this court; but on the contrary it clearly appeared on the pleadings and proof that said Johnson was not "in custody in violation of

the Constitution or of a law or treaty of the United States" (R. S. Sec. 53), so that the writ of habeas corpus did not extend to him, being in jail (id.); and that, as it likewise clearly appeared that the case was not one "that involves the construction or application of the Constitution of the United States" (Act of March 3, 1891, Sec. 5, 1 Supp., p. 903), there was no right of appeal to this court; and that consequently this court did not acquire jurisdiction of said case and should not proceed to inflict punishment as for contempt for the acts charged, but should leave them to be dealt with as crimes.

The case is now set for hearing on the information and said plea. The averments of each are taken as true for present purposes as to matters of fact well pleaded, the court to take notice of the record in Johnson vs. Tennessee, on which the appeal was allowed.

ARGUMENT.

While the appellate jurisdiction of this Court is derived from the Constitution, it is "with such exceptions and under such regulations as Congress shall make." (Art. III., Sec. 2.)

National Exchange Bank vs. Peters, 144 U. S. 570.
Cross vs. United States, 145 U. S. 571.
In re Glaser, 198 U. S. 171.

It will be admitted that the right of appeal here must be found, if at all, in the fifth clause of section 5 of the Circuit Court of Appeals Act, supra, "in any case that involves the construction or application of the Constitution of the United States."

In re Lennon, 150 U. S. 393, 398.

In M. C. & L. R. Co. vs. Swan, 111 U. S. 379, the Court, by Mr. Justice Matthews, said:

"But the rule, springing from the nature and limits of

the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it."

Quoted in Kentucky vs. Powers, 201 U. S. at p. 35, see also id. p. 24.

We may surely assume that this Court will the more willingly inquire into its jurisdiction in a case when it is asked to inflict personal punishment for disregard of its own order only.

We assume that it will hardly be contended that the mere allowance of an appeal is sufficient to give the court jurisdiction of a case which from its nature is not appealable. Such action is *pro forma* only, and as it is necessarily had in every case the jurisdiction of the court would always be established by an *ex parte* order.

If the principle involved here were that of immunity of judges from liability for acts done judicially, as, for instance, if by the order of the Justice who allowed the appeal or that of the Court itself Johnson had been taken into Federal custody, as he might have been under paragraph 2 of Rule 34, the making of the order would be judicial action, jurisdiction or not, because, as the court said by Mr. Justice Field in Bradley vs. Fisher, 13 Wall. 335, 352:

"No personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held

by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject-matter is invoked. Indeed some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction, or that of the court held by him, or the manner in which the jurisdiction shall be exercised. And the same principle of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject and person, applies in cases of this kind (i. e., when there is not jurisdiction), and for the same reasons."

See also Austin vs. Vrooman, 128 N. Y. 229, by Judge now Mr. Justice Peckham, and Grove vs. Van Dyne, 44 N. J. L. 654.

So it might be, too, with the marshal or other officer of this court if he had confined Johnson by virtue of such an order, notwithstanding lack of actual jurisdiction to make it. Horton vs. Hendershot, 1 Hill, 119.

But as was held in the case last named:

"The rule which justifies the officer, when acting under such process as I have mentioned, is one of protection and not of assault. It is a shield, but not a sword. The officer when sued may defend under such process, but he can not build up a title upon it which will enable him to maintain actions against third persons."

The same rule applies, of course, to the court or judge.

This proceeding is of a purely criminal character, both in form and in fact, and not of a civil or remedial character whose purpose is to secure or enforce the rights of a party.

Bessette vs. W. B. Conkey Co. 194 U. S. 324-328.

It is proposed to make the order allowing the appeal and the alleged acts of the defendants in preventing the court from hearing the case on appeal the basis of affirmative penal

action against them, so that the question is fundamental whether the case in which the order was made was one which in fact came within the limited appellate jurisdiction of the Court, whether Johnson really had the right, of which the defendants are charged with depriving him, to have this court hear his case; because, if an order be made without jurisdiction, there can be no punishment for contempt.

Ex parte Rowland, 104 U. S. 604-612.
Ex parte Fisk, 113 U. S. 713.
In re Sawyer, 124 U. S. 200.

It has sometimes been suggested that a person to whom an order is directed will not be heard to question the authority of the court to make it, when he is arraigned for disobedience, as in the McKenzie Contempt Cases, 106 Fed. 788, 109 Fed. 971. This point seems to have been negatived by inference in In re McKenzie, 180 U. S. 536, the Court holding that the orders were not necessarily void, and refusing, for that reason only, to review the action of the Circuit Court of Appeals. But this suggestion has always been by way of admonition only, because we know of no case where it was made in which it was ever the basis of punishment for contempt, the finding having always been that the order disobeyed was in fact authorized. And in such cases generally, if not always, the proceeding has had for its object the suppression of a continuing disobedience and not mere punishment for past acts.

Nor is this proceeding one for the purpose of protecting or vindicating the dignity of the Court generally, as in cases of disturbance in its presence or hearing, reflection on its motives, etc., where no question of jurisdiction in a particular case can arise.

Neither is it one for the exercise of disciplinary power over

officers of the court, because these defendants are officials of the State of Tennessee, not of the United States.

In short, when a proceeding is strictly and solely punitive, like this, and the penalty may include imprisonment, we submit that this court, whose standards of personal liberty are so high, should not be controlled by any general theories of discipline or dignity, but only by the result of the inquiry whether the order, disobedience to which is the basis of the proceeding, was made in a case to which its jurisdiction, as limited by law, extended. It surely is sufficient to maintain the authority of the court to impose on all persons the risk of such decision, without denying the right to ask that it be made. And the power to decide whether the case be one of which the court has jurisdiction can not properly be held to be the equivalent of actual jurisdiction for purposes purely penal, especially when the jurisdiction of the court is limited and not general.

The only question, therefore, is whether Johnson's proceeding in habeas corpus in the Circuit Court did or did not in fact constitute a "case that involves the construction or application of the Constitution of the United States." If it did, this Court had appellate jurisdiction of it and should proceed to inquire whether its order has been disobeyed. It it did not, this Court had no jurisdiction of it and should now so hold for the purposes of this proceeding, just as it would have done if the State of Tennessee had raised the question on the attempted appeal. That State invokes the judgment of the court on it now by its officers whom it is proposed to punish by imprisonment or otherwise, thereby affecting their ability to discharge their official duties.

The Court has many times pointed out the tests by which it will determine whether or not a case involves the construction or application of the Constitution of the United States.

In Rogers vs. Peck, 199 U. S. 425, the court said by Mr. Justice Day, p. 433:

"The extent of the right of Federal courts to interfere by a writ of habeas corpus with proceedings of courts and other authorities of a State is carefully defined by statute."

And at p. 434:

"The reluctance with which this court will sanction Federal interference with a State in the administration of its domestic law for the prosecution of crime has been frequently stated in the deliverances of the court upon the subject. It is only where fundamental rights, specially secured by the Federal Constitution, are invaded, that such interference is warranted."

The case must involve the construction or application of the Constitution "within the intent and meaning of this statute," In re Lennon, 150 U. S. 393, 399, supra, which, as the case shows, means that there must be a bona fide Constitutional question which must have controlled the judgment. See also,

Carey vs. Houston & Texas Central Ry. 150 U. S. 170, 181.

In the latter case the court said by Mr. Chief Justice Fuller, p. 181:

"It is argued that the record shows that complainants had been deprived of their property without due process of law, by means of the decree attacked, but because the bill alleged irregularities, errors, and jurisdictional defects in the foreclosure proceedings, and fraud in respect thereof and in the subsequent transactions, which might have enabled the railroad company upon a direct appeal to have avoided the decree of sale, or which, if sustained on this bill, might have justified the Circuit Court in setting aside that decree, it does not follow that the construction or application of the Constitution of the United States was involved in the case *in the sense of the statute.*"

Also, Carter vs. Roberts, 177 U. S. 496.

C. H. & D. Ry. vs. Thiebaud, 177 U. S. 615, 620.

In Whitten vs. Tomlinson, 160 U. S. 231, 240, 242, 247, it was held that facts alleged in a petition for habeas corpus can be taken as true only when not denied by the return, nor controlled by other evidence; and the allegations there were held to be mere conclusions of law and not matters of fact. The court said:

"There could be no better illustration than this case affords of the wisdom, if not necessity, of the rule, established by the decisions of this court, above cited, that a prisoner in custody under the authority of a State should not, except in a case of peculiar urgency, be discharged by a court or judge of the United States upon a writ of habeas corpus, in advance of any proceedings in the courts of the State to test the validity of his arrest and detention. To adopt a different rule would unduly interfere with the exercise of the criminal jurisdiction of the several States, and with the performance by this court of its appropriate duties."

Also Kohl vs. Lehlback, 160 U. S. 293, where it was held, too, that an objection to a juror can not be used in a proceeding on habeas corpus to raise a Constitutional question, it not having been brought to the attention of the State court, pp. 302, 303.

The two cases last cited, and also Reid vs. Jones, 187 U. S. 153, show that the exceptional cases in which resort may be had to habeas corpus in the Federal courts, instead of to the highest court of the State, are only those of public and not mere private emergency, where the operations of the government are affected, as by the imprisonment of an officer.

In Minnesota vs. Brundage, 180 U. S. 499, 505, it was also held that the Constitutional question must have been raised in the State court before it can be made the basis of a proceeding in habeas corpus in the Federal court.

Also New York vs. Eno, 155 U. S. 89, 96-7.

The Constitutional question must be real and substantial.

In Storti vs. Massachusetts, 183 U. S. 138, the court said by Mr. Justice Brewer, pp. 143-4:

"The petition presented no case entitling the petitioner to a discharge, as the grounds stated therein are absolutely frivolous" and "the grounds set forth in this petition for the discharge by the Federal Court of the petitioner from the custody of the warden are wholly without foundation."

In Bradley vs. Lightcap, No. 3, 195 U. S. 25, the court said by Mr. Chief Justice Fuller:

"A case does not necessarily arise under the Constitution or laws of the United States every time a writ of error would lie to the judgment of the State court," p. 26.

The above cases were on appeal under the Circuit Court of Appeals Act, but they simply apply the principle which is well established in all cases where the appellate jurisdiction of the Court is invoked.

In Wilson vs. North Carolina, 169 U. S. 586, the court said by Mr. Justice Peckham:

"A consideration of the facts convinces us that the motion to dismiss this writ of error for lack of jurisdiction ought to be granted," citing (p. 595) Hamblin vs. Western Land Co. 147 U. S. 531, where it was held that a "real, and not a fictitious, Federal question is essential to the jurisdiction of this court over the judgments of state courts;" and New Orleans vs. New Orleans Water Works Co. 142 U. S. 79, 87, where it was held that "the bare averment of a Federal question is not in all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a Federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay." And p. 596: "We are of opinion that the facts herein present no such case, and that the jurisdiction of this court does not extend to the case as made in the record now before us."

Also Bonin vs. Gulf Co. 198 U. S. 115, 117.
Lampasas vs. Bell, 180 U. S. 276, 282-3.

The Federal question can not be first raised in the assignment of errors, but there must have been a definite claim of a right under the Constitution or laws of the United States.

Muse[illegible]lington Hotel Co. 168 U. S. 430
Ans[illegible]ited States, 159 U. S. 695, 7.
Chica[illegible]. W. Ry. vs. Chicago, 164 U. S. 454.

It is true that the jurisdiction of the Court in error to the State court of last resort depends on R. S. section 709, which in terms requires the Federal right to be specially set up or claimed. But the above cases and many others show that the failure of the record to disclose a case of the kind which this court is authorized by law to review is held to amount to a *lack of jurisdiction*, not mere ground for affirmance. See Arkansas vs. Schlierholz, 179 U. S. 598; Chicago & N. W. Ry. supra, 457-8; Hulbert vs. Chicago, 202 U. S. 275, 281; Davis vs. Texas, 139 U. S. 651, 657; Mortin vs. Texas, 200 U. S. 316.

The Court has decided too often to require citation of cases that proceedings in habeas corpus can not be used to review the action of State courts. And the above cases show that when the appellate jurisdiction of this Court is invoked by appeal from the action of circuit courts in such proceedings, the Court applies the same strictness of scrutiny in determining whether they really and substantially involve the application or construction of the Constitution, as it does in cases where it reviews on error the final judgments of the State courts. A case can not be said to involve a Federal question when no such question was raised, nor any facts shown from which it could be raised, in the course of the State proceedings with which it is sought to interfere by habeas corpus.

Now, as averred in the plea and shown by the record, no

question of the application or construction of the Constitution was raised or suggested at the trial in the State court, nor was there proof or tender of proof which could be the foundation for such question. Mortin vs. Texas, supra. The petition for habeas corpus alleged no lack of jurisdiction in the State court either to try Johnson or to adjudge the sentence under which he was in custody. It is not charged that any of the alleged denials of rights secured to him by the Constitution of the United States were made by virtue or under color of the Constitution, laws, or rules of practice of the State. While an alleged denial of Constitutional rights by State officials acting contrary to the laws of the State may be subjected to review in this court, this can not be done through a writ of habeas corpus, but only by writ of error to the highest court of the State.

In re Wood, 140 U. S. 278.

The same rule was applied in Kentucky vs. Powers, supra. While that case related to habeas corpus issued under the removal act, R. S. section 641-2, it applies equally here because the principle is the same.

As the court said by Mr. Justice McKenna in Howard vs. Kentucky, 200 U. S. 164, 173, "It was not designed, as was observed by the Chief Justice in In re Converse, supra, 'to interfere with the power of the State to protect the lives, liberty and property of its citizens; nor with the exercise of that power in the adjudication of the courts of the State in administering the process provided by the law of the State.'"

The various decisions which speak of the discretion of the Federal courts whether they will interfere or not with State proceedings directly by habeas corpus or require the party first to exhaust his remedies in the state courts must manifestly be taken to refer to cases which do in fact involve constitutional rights and therefore come within Federal jurisdic-

tion and not to cases of which, from their lack of such nature, the Federal courts can not take cognizance at all.

The claims of Johnson that he was deprived of Constitutional rights were not real and substantial, but were "absolutely frivolous" and "wholly without foundation."

Storti vs. Massachusetts, *supra.*

In his petition for appeal filed in this court he charges first that he "was denied his right of a public trial." But the proof at the hearing in the Circuit Court, all of which is set forth in the transcript which accompanied the petition for appeal, showed without dispute that at the request of his own counsel precautions were merely taken to prevent the attendance of disorderly persons; that such precautions were withdrawn when the first day of the trial showed them to be needless, and that during each and all of the three days the trial lasted there was a large attendance of the public. In his petition to the Circuit Court he charged that his father and mother and all other friends were shut out. There is not a particle of proof to this effect; but the evidence shows it was a mere pretense.

In his petition for appeal he charged, second, that he was denied a trial by a fair and impartial jury, and "was denied the aid of counsel, all in violation of the fifth and sixth amendments to the Constitution." The record discloses on the contrary, without dispute, that he never made or had ground for any objection to the selection or character of the jury. On the contrary it appears that his counsel, learning from the officers of the court that colored men had not been discriminated against in the selection of the jury, forebore to make any objection, and the evidence showed that names of negroes were in the jury box and that negroes had served on juries at various times. In his petition to the Circuit Court he set out the emotional exclamation of a

juror which the proof shows was after the evidence had closed and the young woman upon whom the rape had been committed had been recalled at the request of a juror, but no exception or request was made in consequence of the incident because it was treated by all, including the prisoner and his counsel, as merely the effect of the proof on an emotional nature, and not as evidence that the juror was prejudiced when accepted and sworn. As stated in the answer the juror was quieted by the other jurors and apologized to the Court. The record further shows that as he was unable to employ counsel, the State court appointed three lawyers of high standing to conduct his defense, and that they did so, as he himself admits in his petition to the Circuit Court, with ability, fidelity and zeal. It is well settled, too, that the first ten amendments to the Constitution apply only to Federal and not to State proceedings.

Spies vs. Illinois, 123 U. S. 131, 166.
In re Sawyer, 124 U. S. 200, 219.
Davis vs. Texas, 139 U. S. 651, 61-3.

In the petition for appeal he charges, third, that he "was also denied rights secured him under the fourteenth amendment to the Constitution, in this, that he was denied by the State court the right of change of venue, and the right after his conviction of making a motion for a new trial and appealing his case to the State Supreme Court, which is provided for by the laws of the State." The record shows, on the contrary, that he never applied for a change of venue at all; that he presented no motion for a new trial until the three days allowed by the long settled rules of the court had expired, and that he was not denied the right of appeal to the State Supreme Court. He never applied for it nor tendered a bill of exceptions.

He charges in the petition for appeal, fourth, "that he

was also denied the right of setting up by plea in abatement to the indictment and by affidavit to challenge the array of trial jurors on account of the fact that the State jury law has excluded from the jury box the names of all persons of petitioner's race, he being a negro or a person of African descent." There was no such law, and the record shows that he never claimed the right to file such plea or affidavit.

The above are the only matters claimed to involve the application or construction of the Constitution of the United States that were set up in the petition for appeal.

The allegations of the petition in the Circuit Court went more into detail, but each and every of them was explicitly denied by the answer and the record shows that they were wholly unfounded. It contains the testimony of his own counsel, of the judge and clerk of the trial court, and of the Attorney-General who conducted the prosecution. The judge did not inform petitioner's counsel that he was not going to grant a change of venue, nor did he or any other official advise and inform his counsel that if they made an application for a change of venue or a continuance the mob would again attack the jail and succeed in murdering the petitioner. There was no evidence whatever to that effect. The vague statement that "these officials" had caused and inspired an article to be printed in a newspaper assuring the public that the prisoner would surely be tried on the day set, and that there would be no further delay, etc., was wholly unsupported by the proof. On the contrary it appears that the article was prepared and published by one of his own counsel, of his own motion, to allay public feeling. If his counsel saw fit not to take the necessary steps to secure a change of venue, or postponement of the trial from the day they themselves had agreed on, or an exception to the denial of them, as the record shows, this certainly constituted no invasion of Constitutional rights by the State of Tennessee or any official thereof, or anybody else.

That a mob had once attacked the jail with intent to lynch him and been repelled, was true, but he had already been removed to a distant county; that the danger was generally feared of a fresh outbreak of mob violence in case of delay, was doubtless true. But such a condition of affairs, deplorable as it was, will surely not be claimed to constitute a ground for Federal jurisdiction in habeas corpus. It was a local condition with which the State alone had to deal, and if it had any effect on the course of Johnson's trial and this could be the subject of Federal cognizance at all, for which there is no authority whatever in Constitution, law, decision or principle, it could only be in review of the action of the State court of last resort with reference to the matter when properly brought before it.

The record shows it is not true that the court or anybody compelled Johnson to get up from his seat and walk in front of the young lady he was charged with outraging to be examined and scrutinized by her. On the contrary it shows that this very usual request by a juror was complied with by him voluntarily without objection from either him or his counsel.

The allegations with reference to the placing names in the jury box are shown by the record to be wholly untrue.

While it is true that his counsel gave notice that they would file a motion for a new trial, they did not do so because, after careful conference with other lawyers appointed by the court at their request for that purpose, they decided that there were no just grounds for the same. As one of them, Thomas, said to the judge, "I think you have given us a painstaking and a fair and impartial trial." It was unusually so. The prisoner's counsel were advised in advance of the State's evidence, the court recessed to enable them to secure a witness, the trial lasted three days and the jury took from one day until the next in considering their verdict.

This conclusion being presented to the peritioner he submitted to it. He says he did so to avoid being killed by a mob. But surely it will not be contended that this gave the Federal Courts jurisdiction in habeas corpus. It is nowhere suggested that the State authorities vere unwilling to protect him, as they had already done, nor that the power of the State was insufficient to enable them to do so. Even if this were not so the fact would not give the Federal judiciary jurisdiction.

The record shows that counsel who took charge of Johnson's case after he had accepted the decision of those who had conducted his trial to proceed no further never took any steps towards preparing or presenting a bill of exceptions or taking an appeal, although the court remained in session for an entire week after his conviction, and for five consecutive days after said counsel first appeared. The suggestion that the trial judge left the State, as a reason for Johnson's counsel not getting a bill of exceptions and leave to appeal, the record shows to have been wholly frivolous by the testimony of counsel on both sides and that of the new counsel, Paden, himself.

In short, the record shows that this Court was imposed upon with respect to the true nature of this case, and so grossly that it is hard to resist the conclusion that this was purposely done. There was not even the color of a case involving any real question of constitutional right. The conference of counsel, six in number, and of the best the city afforded, unanimously decided that Johnson had had a fair trial; that no error had been committed; that an appeal would therefore be useless except merely to prolong the life of a man found guilty of a most infamous crime, which they did not consider it their duty to attempt, especially in view of the probable result upon public feeling. The subsequent

efforts of other counsel ignorant and reckless of the facts about the trial have put the court unwittingly in a false position and misled the Attorney-General. And we respectfully submit that persistence in the prayer of the Information in view of the plea, supported as it is in all respects by the undisputed facts in the record, would be an appeal to false pride and not to the true dignity which has always ennobled the Supreme Court of the United States.

The people of the South are struggling with a task the like of which was never known before. It is one which nobody but themselves can work out, and they must do it unaided save by friendly sympathy. The provocations for attempts at irregular justice, which are too common in all parts of the country, are more numerous and frequent there where apprehension stands at every man's door to quicken his indignation at outrages committed upon the families of his neighbors.

The Attorney-General in his testimony said: "I feel like the law's delay already in respect of all cases of this kind had engendered whatever mob spirit existed throughout the country on account of offenses like this, and if we could have speedy trials rather than delay them it would have a good effect on the public with reference to allaying in the future any such mob spirit as generally existed in cases of this kind."

That this is true there can be no doubt. There may be cases where haste overleaps the precautions with which the administration of justice must always be guarded, but the courts of the States do not lack the power or the will to correct such errors. When to mere error is added the sacrifice of rights secured by the Federal Constitution this court has always been and will always be prompt with its ample power of redress which is limited only by precautions against premature or needless interference with State tribun-

als to which the Constitution is as sacred as to itself. Whitten vs. Tomlinson, supra, at p. 245.

The case here presented involved neither a denial of justice, whether by the laws of Tennessee or by the mode in which they were administered, nor the invasion of a right secured by the Federal Constitution. It was therefore not a case of which the Circuit Court or this Court was authorized to take cognizance. The Circuit Court, learning the nature of the case, dismissed the petition. This Court, however, undertook to entertain an appeal under misapprehension caused by a reckless misrepresentation of its character. If these defendants did what they are charged with doing they are each and all foresworn officers of the State of Tennessee and criminals under its laws besides. It would be a reflection on the dignity of that old and honored Commonwealth to assume that they will go unpunished. And we submit, with all respect, that if the Court shall find that the case was in fact one in which under the law an appeal did not lie, its dignity will be better sustained by correcting its allowance of one than by making it the basis of further action, and that of a purely criminal nature which can subserve no remedial purpose whatever.

Respectfully submitted,

JUDSON HARMON,

For J. F. Shipp, Sheriff, et al.

CLIFT & COOKE,

ROBERT PRITCHARD,

Of Counsel.

November, 1906.

FILE COPY.

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

[redacted]

In the Supreme Court of the United States.

[redacted]

THE UNITED STATES OF AMERICA, complainants.
vs.
JOHN F. SHIPP ET ALS., DEFENDANTS.

No. 5 Orig
O. T. 1907

BRIEF

Of Attorneys for Nicholas Nolan, Claude Powell, Charles Powell, Bart Justice, John Jones, Henry Padgett, William Mayes, John Varnell and Alfred Handman.

In the Supreme Court of the United States.

October Term, 1906.

May it Please the Honorable Court:

Inasmuch as the charges against these defendants are the same, and as their defenses are identical in substance, we have chosen to present a joint brief for all of them.

The allegation of the Information against these respondents is found in the 5th paragraph and is as folows:

"That thereafter, to-wit: at about the hour of 9 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga, in the said county and state, the above named defendants, John F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, Joseph Clark, "Nick" Nolan, (whose true first name is to complainants unknown) "Sheenie" Warner (whose true first name is to complainants unknown), Luther Williams, Paul Pool, William Marquette, William Beeler, Claude Powell, Charles J. Powell, "Bart" Justice, (whose true first name is to complainants unknown), John Jones, A. J. Cartwright, Henry Padgett, William May, Frank Ward, John Varnell and Alfred Hammond, and each of them and a large number of other persons whose names are to complainants unknown, did then and there willfully, unlawfully, and wrongfully combine, conspire, confederate, and agree together to break and enter the said county jail of Hamilton county for the purpose of taking therefrom the person of the said Ed Johnson to lynch and murder him, the said Ed Johnson, with the intent then and there had and entertained by the said defendants, and each of them, to show their contempt and disregard for the order of this honorable court made, entered, issued and published, as aforesaid, and for the purpose of preventing this honorable court from hearing the appeal of the

said Ed Johnson, allowed by this court, as aforesaid, and for the purpose of preventing the said Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States; that in the prosecution and furtherance of said unlawful conspiracy, made and entered into as aforesaid, and in order to show their contempt and disregard for the said order of this honorable court, and in order to prevent this court from hearing said appeal, said defendants and each of them did then and there do the things and commit the acts more particularly described, as follows, to-wit:

"That between the hours of 9 and 12 o'clock on the evening of the said 19th day of March, 1906, at the city of Chattanooga, in the county and state aforesaid, a large number of persons, including the above named defendants, with the exception of the said John F. Shipp, the sheriff of said county, and the said Jeremiah Gibson, deputy sheriff of said county, assembled in the vicinity of said county jail, and thereupon said mob unlawfully and wrongfully entered said jail and with force and arms broke open the cell in which the said Ed Johnson was then and there confined as a prisoner, and with force and violence and against the will of him, the said Ed Johnson, took him, the said Ed Johnson, from said jail to a point a short distance therefrom and hanged him, the said Ed Johnson, by the neck until he was dead; that at the time said mob entered said jail, as aforesaid, the only person in charge thereof was the said deputy sheriff, Jeremiah Gibson; that while the mob was in possession of said jail the said sheriff, John F. Shipp, arrived at said jail but made no effort to prevent said mob or any of the members thereof from taking the said Ed Johnson from said jail; that the said John F. Shipp and the said Jeremiah Gibson were in truth and in fact in sympathy with said mob, and while pretending to perform their duty as officials of said county and state in affording protection to the said Ed Johnson, who was then and there in their unlawful custody and control, the said John F. Shipp and the said Jeremiah Gibson and each of them did in truth and in fact

aid and abet said mob and the members thereof in the prosecution and performance of their unlawful act in lynching and murdering the said Ed Johnson, as aforesaid; that during all this time the above named defendants and each of them, and the said John F. Shipp and the said Jeremiah Gibson and each of them then and there well knew that the Supreme Court of the United States had made, entered, issued, and published the order in the manner hereinbefore set forth; that all of said acts were then and there committed by said defendants and each of them, and the other members of said mob, whose names are to complainants unknown, with the intent then and there had and entered into by them and by each of them to show their contempt and utter disregard for the order of this honorable court made and entered into as aforesaid, and in order to prevent this honorable court from hearing the appeal of the said Ed Johnson, which appeal had been perfected and allowed, as aforesaid."

Each of the defendants has filed a separate answer in which he purges himself of the contempt alleged against him by direct and positive denial of every fact alleged against him in the Information of the Attorney General. Each of them denies that he violated the order of this honorable court, or that he did any act in connection with the lynching of Ed Johnson by the mob of the 19th of March, 1906, which was in contempt of the order of this honorable court, or intended to deprive it of hearing the appeal of said Ed Johnson, or that he counselled or advised the act of the mob in advance, or approved it after it was done. We quote the answer of the defendant Alfred Handman, which substantially is the same as the answers of all the defendants:

The United States of America, Complainants,

vs.

John F. Shipp and others, Defendants.

Answer of Alfred Handman to the Information of Mr. Attorney General William H. Moody, filed in the above styled

cause, and to the rule to show cause why he should not be punished as and for a contempt of this honorable court, issued May 28, 1906.

By way of answer to the information filed by the Attorney General and the rule granted by the honorable court this defendant shows and avers as follows:

He denies that he had any connection with or had anything to do with the mob which attacked the jail of Hamilton County, Tennessee, on the evening and night of the 19th day of March, 1906, when Ed Johnson was taken from said jail and hanged. This defendant had no knowledge or information whatever by rumor or otherwise that a mob was to be formed or was forming to lynch and murder said Ed Johnson.

He did not at any time combine, conspire, confederate or agree with the persons named in said Information or any or either of them, or with any other person or persons to break and enter the jail of Hamilton County for the purpose of taking therefrom the person of Ed Johnson to lynch and murder him. He did not participate with the mob that broke the jail, or with the mob which lynched and murdered said Ed Johnson. He did not know beforehand that a mob was to be formed to lynch said Ed Johnson, and he did not in any way aid, abet, counsel or advise the lynching of said Johnson, and did not know anything about the formation of the mob or its work until after the affair was over, and did not approve the action of the mob in lynching and murdering the said Ed Johnson.

Defendant was informed after Johnson was hanged, that the mob attacked the jail at or about the hour of 9 o'clock P. M. March 19, 1906. At that time defendant was at the saloon of Ransom & Co., on Market street, in the city of Chattanooga, where he had gone about 8 o'clock P. M. to meet some friends. He met among others Messrs. Wm. Hodgson, Richard Pooler and John Kean. By an ordinance of the City of Chattanooga all saloons are required to close at the hour of ten o'clock. He remained at said saloon until the closing

thereof at ten o'clock P. M. After leaving said saloon defendant went immediately to Fire Hall No. 1, on Carter street, in said City of Chattanooga, and there met the night watchman, Mr. Henry Gunther, who told him of the lynching of Ed Johnson. He left the Fire Hall about 10:30 o'clock P. M. and went to his bed at the home of Mrs. Kelly O'Rear, on Gillespie street.

This defendant denies that he ever at any time did any act to show contempt and disregard for the order of this honorable court or to prevent this court from hearing the appeal of the said Ed Johnson. He has always entertained the very highest respect for this honorable court.

And now having fully answered the information and rule so far as they affect him, he prays to be hence discharged and as in duty bound he will ever pray.

ALFRED HANDMAN.

LEWIS SHEPHERD,
FLEMING & SHEPHERD,
Attorneys for Defendant.

State of Tennessee, Hamilton County.

Personally appeared Alfred Handman and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information and belief.

ALFRED HANDMAN.

Subscribed and sworn to before me this Oct. 8, 1906.

WILLIAM C. SHEPHERD,
Notary Public.

This answer and the others are duly sworn to by the defendants, and we respectfully insist that they are full and frank answers to the charges made in the Information. We do not see how answers could be framed which would more completely meet and deny the charges and specifications preferred against the defendants.

Upon the coming in of these answers, we entered a motion severally for each of the respondents to discharge the rule nisi against him.

I.

SHOULD THE DEFENDANTS BE DISCHARGED UPON THE COMING IN OF THEIR SWORN ANSWERS PURGING THEMSELVES OF CONTEMPT?

Proceedings in contempt are of two classes, namely, (1) those instituted solely for the purpose of vindicating the dignity and preserving the power of the court. These are criminal and punitive in their nature and are usually instituted by the court in the interest of the general public and not of any particular individual or suitor. (2) Those instituted by private individuals for the purpose mainly if not wholly of protecting or enforcing private rights and in which the public have no special interest. These are remedial or civil in their nature rather than criminal or punitive.

The proceeding in this case falls within the first class of contempts mentioned. The rule at common law was that a person charged with contempt of a court of law was made to answer the contempt on oath, and if by his oath he cleared himself of the contempt he was discharged. No testimony was taken by the court to rebut his own, but should he swear falsely, he was subsequently prosecuted for perjury. This is still the rule except in cases affecting private property and private rights. It does not make so much difference whether the contempt proceeding is in a court of law or a court of equity. The logical distinction between contempts in this regard relates to the nature of the particular contempt rather than to the court in which it occurred.

Thompson v. Pa. Ry. 48 N. J. Equity 105.

Manifestly, the contempt charged in this case belongs to

the class known as criminal or constructive contempts in which the answer of the contennor is conclusive.

Rex v. Vaughan, 2 Doug. 516;
Rex v. Sims, 12 Mod. 511;
U. S. v. Dodge, 2 Gall (U. S.) 313;
In Re May, 1 Fed. Rep. 737;
Haskett v. State, 51 Ind. 176;
Burke v. State, 47 Ind. 528;
State vs. Earle, 41 Ind. 464;
People v. Few, 2 Johns. 290;
Matter of Walker, 82 N. C. 95;
Matter of Moore, 63 N. C. 397;
Thomas v. Cummings, 1 Yates Pa. 40;
Underwood's case, 2 Hump. Tenn. 46.

The case In Re May, 1 Fed. Rep. 737, the opinion in which was delivered by Mr. Justice Brown while he was a Circuit Judge, seems to us to contain a lucid and accurate statement of the law bearing on this question. In that case there was a rule nisi against a juror setting forth that the defendant had gone in the night time to the house of Markus Burnstine, one of the defendants to a suit then being tried before the jury, for the purpose of corruptly conferring with Burnstine concerning the case on trial, and concerning the verdict to be rendered therein, and that he talked with Burnstine and allowed Burnstine to talk with him concerning the facts in evidence in the case, and also corruptly negotiated with Burnstine as to the verdict he should render in the case, and that therefore defendant was guilty of misbehavior in the presence of the court or so near thereto as to obstruct the ends of justice.

The defendant answered, and gave in his answer a lengthy history of his transactions with one of the litigants which presented on its face an incredible and unreasonable story. It was a fishy story on the face of it. Judge Brown uses the following language in deciding the case:

"It is a cardinal rule in proceedings for criminal contempt

that the answer of the defendant cannot be traversed and must be taken as true. If false, the government is remitted to a prosecution for perjury." Citing 4 Black. Com. 281. In the matter of Pitman, 1 Curt. 186; U. S. v. Dodge, 2 Gall. 313; etc.

"But the answer must be credible and consistent with itself, and if the respondent states facts which are inconsistent with his avowed purpose and intention, the court will be at liberty to draw its own inferences from the fact stated. For instance, if the respondent in this case had stated that in his interview with Burnstine he had asked and received of him $1,000.00, and had kept the money in his pocket until after the jury were discharged; and had further stated that he did this for the purpose of delivering the money to the District Attorney, and prosecuting Brunstine for bribery, it would scarcely be contended that the court would be bound to draw the same inference from his conduct. So then, it is, after all, a question in every case whether the facts stated are consistent with an honest intent."

The case of Haskett vs. The State, 51 Ind., 177, was a proceeding of contempt agains a man charged with having induced a witness to hide and conceal herself to avoid service of a subpoena to testify on her; he answered admitting that he had accompanied the witness when she went away from the court where the action was pending; that she was his daughter and told him that she meant to abandon the prosecution; that he had no knowledge that a subpoena had been issued for her, etc., etc.

Upon this answer the defendant moved to be discharged, which motion was overruled. The court reversing the judgment in that case said:

"It has been held in several cases in this court that if the defendant in such case deny under oath the facts constituting the alleged contempt, he should be discharged, leaving him, if he has sworn falsely, to be prosecuted for perjury."

And again:

"We believe it is the policy of the law not to extend the proceeding for constructive contempt to cases not coming within established rules, and we are, therefore, the more willing to hold that the answer of the appellant was sufficient to purge him of the alleged contempt. We conclude that the court should have discharged the appellant from the attachment upon the showing made by him. We may remark in conclusion that it was probably wrong for the court, after adjudging the appellant's answer insufficient, and he had declined to answer further on to make an issue for him and proceed to try the same. If the answer did not purge the alleged attempt, there was probably nothing to be done, but to assess such punishment as the circumstances of the case made proper. Whether the defendant does or does not purge himself of the alleged contempt, there should not probably be any trial."

In Burk vs. The State, 47 Ind. 528, the rule is thus stated:

"Where a person charged with a constructive contempt in procuring a witness to absent himself appears, and in answer to a rule, makes a sworn statement that the matters in the affidavit are not true, and alleges the state of facts consistent with his innocence, and that there was no intention to interfere with the process of the court, he should be discharged; and it is error for the court to proceed and hear evidence of the truth of the original affidavit and the falsity of the answer.".

In State v. Earle, 41 Ind. 465, the learned judge Osborn remarks:

"We have examined the authorities and are satisfied that in all cases of proceedings for alleged constructive contempt, except perhaps when they are to enforce a civil remedy, if the party charged fully answers all the charges against him, he should be discharged as to the attachment and that the court cannot after that hear evidence to impeach or contradict him."

To the same effect is People vs. Pew, and others, 2 Johns. 290.

In Walker's case in 82 N. C. page 95, it is stated by the court that where the answer to a rule to show cause why one should not be attached for contempt negatives under oath any intentional disrespect to the court or purpose to obstruct its process the rule should be discharged.

The case In Re B. F. Moore, et als, 63 N. C. 397 is in many respects a very peculiar one. Certain lawyers had united in signing and publishing a paper which was headed:

"A SOLEMN PROTEST OF THE BAR OF NORTH CAROLINA AGAINST JUDICIAL INTERFERENCE IN POLITICAL AFFAIRS," and in which, among other offensive things, they said: "But never before have we seen the judges of the Supreme Court singly or en masse moved from that becoming propriety so indispensable to secure the respect of the people, and throwing aside the ermine, rush into a mad contest of politics under the excitement of drums and flags. From the unerring lessons of the past, we are assured that the judge who openly and publicly displays his political party zeal, renders himself unfit to hold the balance of justice and that whenever an occasion may offer to serve his fellow partisans he will yield to the temptation and the 'wavering balance' will shake."

Respondents answered, admitting the signing of the paper, but explaining that the paper was conceived and prepared during a recent political canvass for the presidency, and that its publication was deferred until after the close of the canvass to avoid its having the appearance of a partisan document. They admitted that their purpose was to express their disapprobation of the conduct of individuals occupying high judicial stations. Yet, as an act of justice to themselves against the charge made in the rule, they disavowed in signing and publishing the paper any intention of committing a contempt of the Supreme Court, or of impairing the respect due to its authority, but on the con-

trary, they avowed that their motive was to preserve the purity which had ever distinguished the administration of justice by the courts of their state. The court disposed of the case as follows:

"The learned counsel then fall back on the ground of a distinction between the indictment for a libel and a rule nisi to show cause, and assumed, as a matter of law, that in this case the respondent having, on oath, disavowed any intention of committing a contempt of the court, or of impairing the respect due to its authority, so as to meet the words of the rule, it must be discharged. The authorities cited by the learned counsel are conclusive. The law is well settled in this class of cases, where the intention to injure constitutes the gravamen. The rule rests in sound reason. In this proceeding, as the court is judge in its own case in the first instance, where the case is made out in the judgment of the court, the party in the last instance is allowed to try himself. His intention is locked within his own breast and is known to himself alone, and he is permitted to purge himself by his own avowal. He cannot be convicted, if he is innocent, as he may be by false evidence before a jury. For the court does not try him, he tries himself. Chief Justice Wilmot's opinion 257-8, referred on the trial of Judge Peck 507. If the party after the court decides against him, declines to try himself, it must be because he knows himself to be guilty."

Now, if it be true, as held in these North Carolina cases that contemors may admit that they did the acts complained of, and yet upon their showing on oath that they had no intention to set at naught or disregard the orders of the court, that they must be discharged without more, is it not, we respectfully inquire, afortori, a sound statement of the law that in a contempt involving criminal acts, the answer of the defendants denying the commission of the acts charged against them are conclusive and must result in their discharge?

So we insist that the motion to discharge the defendants be-

cause they have purged themselves of the contempt by their answers should be sustained.

Cyc. vol. 9, p. 44, Oster vs. People, 192 Ill., 473. Exparte Debs, 64 Fed. 724. Exparte Savin 131 U. S. 267.

II.

IF THIS MOTION BE NOT GRANTED THEN WHAT IS TO BE THE COURSE OF PROCEDURE?

It may be put down to the credit of the people of the United States that cases of original cognizance, where this great tribunal has been called upon to issue process of contempt, are exceedingly rare.

The people have too profound a respect—too great a veneration for this, the highest court in the land, to knowingly or intentionally violate its orders, or to impede it in the administration of justice. Some cases of contempt (not a great many), which originated in the inferior courts have found their way to this court. One of the most notable cases of this kind is that of Hovey v. Elliott, 167 U. S. 409 in which Mr. Justice White gave a very able and exhaustive "judicial history of the law concerning contempt of court in England and in this country."

The point which the honorable court was illustrating was, that in a contempt case, the defendant had the same right to demand that he be heard in his defense as he would have in a criminal case. The court says, page 443:

"In the view we take of the case, even conceding that the statute does not limit their authority, and hence that the courts of the District of Columbia, notwithstanding the statute, are vested with those general powers to punish for contempt, which have been usually exercised by courts of equity without express statutory grant, a more fundamental question yet remains to be determined, that is, whether a court possessing plenary power to punish for contempt, unlimited by statute, has the right to summon a defendant to answer, and then after obtain-

ing jurisdiction by the summons, refuse to allow the party summoned to answer or strike his answer from the files, suppress the testimony in his favor, and condemn him without consideration thereof and without a hearing, on the theory that he has been guilty of a contempt of court. The mere statement of this proposition would seem, in reason and conscience, to render imperative a negative answer. The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action, and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

In the case of McVeigh vs. U. S., 11 Wall. 259, where it was sought to deny the right of McVeigh to be heard in opposition to the confiscation of his property by the United States because he was engaged in rebellion against the United States, Mr. Justice Swayne observes:

"In our judgment the District Court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files. As we are unanimous in this conclusion, our opinion will be confirmed to that subject. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and hence could have no locus standi in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon our civilization. We cannot hesitate or doubt on this subject. It would be contrary to the first principles of the social compact and of the right administration of justice."

In the case of Windsor vs. McVeigh, 93 U. S. page 277, which was ejectment for the recovery of land which had

been confiscated, Mr. Justice Field delivering the opinion, the court says:

"The principle stated in this terse language lies at the foundation of all well ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations." A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.

That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, whatever its authority may be, by the law of its organization, over the subject matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim, or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, Appear and you shall be heard, and when he has appeared, saying, Your appearance shall not be recognized and you shall not be heard. In the present case, the District Court not only in effect said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation; it was in fact a mere arbitrary edict, clothed in the form of a judicial sentence.

The law is and always has been, that whenever notice or citation is required, the party cited has the right to appear and be heard; and when the latter is denied, the former is ineffectual for any purpose. The denial to a party in such a case, of the right to appear, is in legal effect the recall of the citation to him. The period within which the appearance must be made and the right to be heard exercised, is, of course, a matter of regulation, depending either upon positive law, or the rules or orders of the court or the established practice in

such cases. And if the appearance be not made, and the right to be heard be not exercised, within the period thus prescribed, the default of the party prosecuted, or possible claimants of the property, may, of course, be entered, and the allegations of the libel be taken as true for the purpose of the proceeding. But the denial of the right to appear and be heard at all is a different matter altogether."

Of course, it is well understood that in the face of the answer of these respondents, the court will not condemn them without a hearing. The question is, if their answers be not accepted as conclusive and the facts must be inquired into further, how is that to be done so as to preserve the rights of the defendants to be heard? It cannot be conceived that this honorable court would turn itself into a trial court and jury to hear witnesses examined and cross-examined, and arguments of lawyers upon the question of the guilt or innocence of these men. It may be in accordance with good practice to refer the question to a commisioner to take evidence and report to the court.

This brings us back to the point of again insisting that the safe and proper way to dispose of this question is to adhere to the course of procedure of the ancient common law, which is to discharge the defendants on their answers purging themselves for contempt.

Respectfully submitted,

LEWIS SHEPHERD,
MARTIN A. FLEMING,
T. P. SHEPHERD.
Attorneys for Defendants.

FILE COPY.

JAN 14 1907

JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

~~October Term, 1906.~~

~~No. 12, Original.~~ No. 4 Orig.

O. T. 1907

THE UNITED STATES OF AMERICA

vs.

JOHN F. SHIPP ET AL.

MOTION FOR THE SUMMONING OF WITNESSES FOR DEFENDANT WILLIAM MARQUETTE AT THE EXPENSE OF THE GOVERNMENT.

JOE V. WILLIAMS,
Attorney for Defendant William Marquette.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 24802

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

The defendant, William Marquette, moves the court by analogy to section 878, Revised Statutes, for the reasons and on account of the facts stated in the affidavit of said Marquette, herewith filed and made a part hereof, that the witnesses whose names are set forth in said affidavit, and who are residents of the southern division of the eastern district of Tennessee, to-wit, Dr. M. L. Crum, Dr. E. C. Johnson, Dr. Cooper Holtzclaw, L. B. Coleman, W. D. Bowers, H. M. Allen, Charles Karston, Robert S. Mastin, F. A. Frawley, J. G. Richardson, and H. D. Rider, be ordered to be subpœnaed to attend at such time and place as the court may designate for hearing of testimony in this cause, and that it be ordered by the court that the costs incurred by the process of subpœna, including the fees and mileage of said witnesses, be paid by the United States in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States, or that in lieu of this that the court, if it deems the same expedient, direct that the testimony to be taken in this cause be taken by a commissioner duly appointed and to sit in the southern division of the eastern district of Tennessee.

JOE V. WILLIAMS,
Attorney for Defendant.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared William Marquette, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses are material to his defense, namely, Dr. M. L. Crum, Dr. E. C. Johnson, Dr. Cooper Holtzclaw, L. B. Coleman, W. D. Bowers, H. M. Allen, Charles Karston, Robert S. Mastin, F. A. Frawley, J. G. Richardson, and H. D. Rider; that he cannot go safely to trial without them; that he expects to prove by said witnesses that on the night of March 19, 1906, he was at the office of Dr. Cooper Holtzclaw and at other places at and during the time said Ed Johnson was hanged on said date; that he was not on said night at or near the county jail or at or near the place where the said Ed Johnson was hanged, and that he had no connection whatever therewith.

All the said witnesses are residents of Chattanooga, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

WILLIAM MARQUET.

Sworn and subscribed to before me this 11th day of January, 1907.

[SEAL.]

CHAS. WATSON,
Notary Public.

FILE COPY.

JAN 14 1907

JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

~~October Term, 1906.~~

~~No. 13, Original.~~

No. 5 Orig.
O.T. 1907

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET AL.

MOTION FOR THE SUMMONING OF WITNESSES FOR CERTAIN DEFENDANTS AT THE EXPENSE OF THE GOVERNMENT.

JUDSON HARMON,
ROBERT PRITCHARD,
JAMES J. LYNCH,
M. H. CLIFT,
ROBERT B. COOKE,
Attorneys for Sheriff Shipp and His Deputies.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 24800

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

The defendants Frank Jones, Mat L. Galloway, C. A. Baker, Thomas B. Taylor, George W. Brown, Jeremiah Gibson, Fred Frawley, Marion Perkins, and Joseph C. Clark, move the honorable court by analogy to section 878, Revised Statutes, for the reasons and on account of the facts stated in the affidavits herewith filed, and numbered from 1 to 9, inclusive, that the witnesses whose names are here set forth in said affidavits, and who are residents of the southern division of the eastern district of Tennessee, viz., S. W. Ault, Jack Tipton, R. S. Brown, W. H. Hartman, Mrs. Nina Hartman, Jeremiah Gibson, Mrs. Ella Taylor, George E. Coster, Dr. A. W. Palmer, Joe Hodges, J. H. Jeanatt, J. Y. McDaniels, Col. T. E. Patterson, W. T. Hayes, Oscar Yarnell, Sherman Beck, George Gahagan, L. G. Frawley, N. I. Schwartz, W. E. Stage, Jeremiah Gibson, George D. Rogers, L. B. Hatcher, and others, whose names are not known at present, but will be furnished, if necessary; W. A. Clark, T. A. Clark, Gilbert Snyder, Boyd Dickson, Mrs. Mary E. Clark and Phama Clark, N. I. Schwartz, W. E. Stage, George D. Rogers, L. B. Hatcher, Fred A. Frawley, Charles Baker, James Elliott, Frank Wallace, George Kirklin, Joe Shipp, Jr., Thomas Sholes, Kid Harkins, George Gahagan, George Lebeau, James Elliott, John Sleay, I. N. Schwartz, and William Viox, be ordered to be subpœnaed to attend at such time and place as the court may designate for hearing the testimony in this cause, and that it be ordered by the court that

the costs incurred by the process of subpœna, including the fees and mileage of said witnesses, be paid by the United States, in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States, or, in lieu of this that the court, if it deems the same expedient, direct that the testimony be taken in this cause by a commissioner duly appointed and to sit at Chattanooga or some other designated point in the southern division of the eastern district of Tennessee.

JUDSON HARMON,
ROBERT PRITCHARD,
JAMES J. LYNCH,
M. H. CLIFT,
ROBERT B. COOKE,
Attorneys for Sheriff Shipp and His Deputies.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared George W. Brown, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses are material to his defense, viz., S. W. Ault, Jack Tipton, R. S. Brown, W. H. Hartman, Mrs. Nina Hartman, and Jeremiah Gibson; that he cannot go safely to trial without them or their testimony; that he expects to prove by said witnesses that on the evening of the night of March the 19th, 1906, about fifteen minutes after six o'clock, he, with his wife, left the county jail of Hamil-

ton county, Tennessee, to go over into Hill City, to take supper with his father, attend church in Hill City that night, as his children were at his father's, having gone over about one o'clock in the afternoon; that he remained at his father's all night, and was not in the city of Chattanooga or at the county jail during the night, or until about six o'clock the next morning, and knew nothing of the alleged mobbing of Ed Johnson until after he had left his father's, on his way to the county jail, after boarding the car coming into the city, and that he was not at or near the county jail or the place where said Ed Johnson was lynched or hanged; that he had no idea or information that such lynching would take place at that time.

All of said witnesses are residents of Hamilton county, Tennessee, in the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

GEO. W. BROWN.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.]

J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Thomas B. Taylor, one of the defendants in the above-styled cause, who made oath as follows:

That the following witnesses, Ella Taylor, George E. Coster, Dr. A. W. Palmer, Joe Hodges, J. H. Jeanatt, J. Y. McDaniels, Col. T. E. Patterson, W. T. Hayes, Oscar Yarnell, Geo. Gahagan, and Sherman Beck, are material witnesses in his defense; that he cannot go safely to trial without them or their testimony; that he expects to prove by said witnesses that on the night of March 19, 1906, his whereabouts, during the night; first, that at the time the alleged lynching of Ed Johnson is said to have taken place he was in Hill City attending an Odd Fellows' entertainment; that he remained there until about fifteen minutes after ten o'clock, when he took the ten-fifteen car for home, reaching home about eleven-fifteen; that he had nothing in the world to do with the lynching of Ed Johnson and no knowledge that it was likely to take place, and hopes to be able to prove other facts by these witnesses important to his defense, and that he has nothing to do with the sheriff's office or the serving of process or things of that sort, as he is simply appointed as engineer in charge of the power plant.

All of said witnesses are residents of Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees of said witnesses, and he

prays the court to order them to be subpœnaed and direct that the costs incurred by the process and the fees of the witness shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

T. B. TAYLOR.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Fred A. Frawley, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, L. G. Frawley, N. I. Schwartz, W. E. Stage, Jeremiah Gibson, George D. Rogers, L. B. Hatcher, and others, are material witnesses for his defense, and that he cannot go to trial safely without their testimony; that he expects to prove by said witnesses that on the evening of the night and the night of March the 19th, 1906, he was not at the county jail of Hamilton county at the time the alleged mob is said to have visited said jail and executed Ed Johnson; that he knew nothing of the organization of the mob or that it was anticipated that there would be a mob on that night; that he expects to prove his whereabouts at

the time the lynching is said to have occurred, and that he was not at the jail nor with the mob.

All of said witnesses are residents of Chattanooga, Tennessee, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in cases of witnesses subpœnaed in behalf of the United States.

F. A. FRAWLEY.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Joseph C. Clark, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, W. A. Clark, T. A. Clark, Gilbert Snyder, Boyd Dickson, Mrs. Mary E. Clark, and Phama Clark, are material witnesses for defense, and that he cannot go safely to trial without their testimony; that he expects to prove by said witnesses that on the evening and

the night of March the 19th, 1906, he was not at the county jail of Hamilton county; was not with the alleged mob; knew nothing of the same until after the lynching is said to have taken place; that he in no way participated therein or had any knowledge of the existence of said mob until after the alleged lynching is said to have taken place; that he was not the deputy sheriff at that time.

All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

JOSEPH C. CLARK.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Mat L. Galloway, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, N. I. Schwartz, W. E. Stage, George D. Rogers, L. B. Hatcher, Fred A. Frawley, Charles

Baker, Marion Perkins, James Elliott, and others, whose names are not at present known, are material witnesses in behalf of defendants, and that he cannot go safely to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March the 19th, 1906; that he was not at the county jail of Hamilton county, or with the alleged mob, and knew nothing of a mob being organized or of its acts until after they had broken into the jail and removed prisoner Ed Johnson therefrom, when he first heard of the existence of the mob, and that he had nothing to do with the same and in no way participated with it and was entirely ignorant of its existence until informed as above stated.

All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

MATT. L. GALLOWAY.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Marion Perkins, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, Frank Wallace, George Kirklin, Joe Shipp, Jr., Thomas Sholes, Kid Harkin, George Gahagan, and others, whose names are not at present known to him, are material witnesses in his behalf on the trial of this cause, and that he cannot safely go to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March the 19th, 1906, prior and up until after the lynching of said Ed Johnson; that he was not at the county jail of Hamilton county or with said alleged mob; knew nothing of its being organized or of its acts until after they had broken into the jail and removed the prisoner, Ed Johnson, therefrom; that he had in his charge a prisoner whose name was —— —— (at present unable to recall the name), whom he carried before a justice of the peace for Hamilton county in the early part of the night of the 19th of March, 1906, where he was tried and committed to the county jail; that when he arrived at the county jail he found out for the first time that the jail had been broken open and the prisoner, Ed Johnson, removed therefrom, and that he had nothing to do with said mob and no idea that the mob would be organized that night and is in no way guilty of the charges specified in the information in this case.

All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

MARION PERKINS.

Sworn to and subscribed before me this 11th day of January, 1907.

[SEAL.] J. E. STRECKER,
Notary Public.

OCTOBER TERM, 1906.

No. 12, ORIGINAL.

THE UNITED STATES OF AMERICA
vs.
JOHN F. SHIPP ET AL.

Before the undersigned personally appeared Charles A. Baker, one of the defendants in the above-styled cause, who makes oath as follows:

That the following witnesses, George Lebeau, James Elliott, John Sleay, and I. N. Schwartz, William Viox and others, whose names are not known at present, are material witnesses in his behalf on the trial of this cause, and that he cannot safely go to trial without their testimony; that he expects to prove by said witnesses his whereabouts on the evening and night of March 19, 1906, prior to and up

until after the lynching of said Ed Johnson; that he was not at the county jail of Hamilton county, or with said alleged mob, and knew nothing of its organization or that it was expected or anticipated that a mob would be organized on that night, until, as he was informed, after the same had broken into and removed said Ed Johnson therefrom; that he had heard of no rumor or threats of mobbing the said Johnson, or any one else on that night, and was not at the jail at the time the mob was there, and knew nothing of it, as before stated, until after it had executed its purpose.

All of said witnesses reside in Hamilton county, within the southern division of the eastern district of Tennessee.

That affiant is not possessed with sufficient means and is actually unable to pay the fees and expenses of said witnesses, and he prays the court to order them to be subpœnaed, and to direct that the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

C. A. BAKER.

Subscribed and sworn to before me this the 11th day of January, 1907.

[SEAL.]

J. E. STRECKER,
Notary Public.

FILE COPY.

JAN 17 1907

JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

[redacted]

No. 5 Orig
O. T. 1907

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET AL.

BRIEF FOR JOSEPH F. SHIPP ET AL. ON MOTIONS FOR ORDERS OF ARREST AND FOR TAKING TESTIMONY.

JUDSON HARMON,
Counsel for Joseph F. Shipp et al.

CLIFT AND COOKE,
ROBERT PRITCHARD,
Of Counsel.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 24843

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 12, Original.

THE UNITED STATES OF AMERICA

vs.

JOHN F. SHIPP ET AL.

BRIEF FOR JOSEPH F. SHIPP ET AL. ON MOTIONS FOR ORDERS OF ARREST AND FOR TAKING TESTIMONY.

MOTION FOR ARREST, &c.

The only object of issuing attachments is to bring before the court the parties charged with contempt so that they may be heard, if defense they have (Rapalje on Contempts, sec. 100).

This course is discretionary with the court when there is any other mode of procedure open. The usual practice is by a rule to show cause (*id.*, secs. 9, 103; U. S. *vs.* Anonymous, 21 Fed., 761).

The Government did not ask for attachments in the information, but very properly followed the usual practice, praying only for the issuance and service of "a rule to show cause,

if any there be, on a day certain, why said defendants and each of them should not be punished as and for a contempt of this honorable court" (Inf., p. 10).

According to some authorities the personal appearance of the parties might have been required (Rapalje on Contempts, sec. 109). But the Government acquiesced in their appearance by counsel and by answers personally signed and verified.

The preliminary matters set up in those answers have been held insufficient cause, and the proceeding now stands as to each defendant on his denial, under positive oath, of the offense charged. This is surely sufficient cause as against an information verified only on information and belief (Inf., p. 11) until the Government produces proof. We submit that the production of that proof is now the only course open to it.

The Government has waived its right to an interlocutory attachment, if it had such right. It has waived the personal attendance of the defendants in answer to the rule. Now, as against their sworn denials, it asks, merely on its naked information, that the defendants be arrested and committed in default of bail. There is no attempt to show any facts to justify a different course from that taken in the prayer of the information.

We submit that to grant this motion would subject the defendants to hardship and indignity which the state of the record does not justify and which would violate the presumption of innocence this court has so strongly upheld.

As to Joseph F. Shipp, sheriff, and his deputies, all this has peculiar force. They are officers of justice of the State of Tennessee. Their time is required in the service of the courts and the preservation of the peace in that State. Courtesy to the State and the tribunals they serve makes regard for the presumption of their innocence highly appropriate as well as just.

MOTION TO TAKE TESTIMONY.

We consent, of course, to the taking of testimony. We consent, too, for the convenience of the court, that the testimony be taken by some disinterested person to be appointed by the court for that purpose.

We pray, however, that the person so appointed be directed to take the testimony at Chattanooga, where all the witnesses on both sides reside. If it should be found that any reside elsewhere we consent to taking their testimony wherever desired.

I am informed and believe, and so state to the court, that the defendants are almost without exception unable to bear the expense of traveling to Washington and remaining there during the hearing, as they would have to do or submit to a practical denial of justice. To compel them to attend a hearing away from home would be in itself a severe punishment, and trial should precede punishment. The analogies of the Constitution and the laws, too, make the place where the offense is charged to have been committed the appropriate one for the taking of the proof. As the sheriff and all his deputies are parties, their absence from their homes would also work harm to the course of business in the courts and to the preservation of the peace of their county.

Respectfully submitted,

JUDSON HARMON,
For Joseph F. Shipp and Others.

CLIFT & COOKE,
ROBERT PRITCHARD,
Of Counsel.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

[redacted]

No. 4 Orig.

O.T. 1907

[redacted]

Office Supreme Court, U. S.
FILED.
JAN 29 1907
JAMES H. McKENNEY,
CLERK.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET AL.

BRIEF FOR DEFENDANTS OPPOSING MOTION OF THE ATTORNEY GENERAL TO REQUIRE WITNESSES TO BE EXAMINED AT WASHINGTON, D. C., INSTEAD OF CHATTANOOGA, TENN.

GEORGE W. CHAMLEE,
LEWIS SHEPHERD,
Attorneys.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 25006

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 12, Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET ALS., DEFENDANTS.

Brief of Defendants Opposing Motion of the Attorney General to Require Witnesses to be Examined at Washington, D. C., Instead of Chattanooga, Tennessee.

The court is familiar with the proceedings of this cause, and this brief is presented in opposition to a motion of the Attorney General, which motion means, if granted, that all the witnesses for the Government in these cases must be examined at Washington, D. C., instead of at Chattanooga, Tennessee.

The reason why the defendants oppose this motion is that they are all poor men, except the sheriff, and not able to pay the expenses of going from Chattanooga to Washington and there remaining, with their attorneys, during the time that

the Government will be taking its proof. It cannot be said that this proof can be heard in their absence, because the charges are serious, and the court has laid down the rule that in contempt cases the defendants are entitled to meet the witnesses face to face. If this hearing is to be had at Washington and the proof taken there, it will practically amount to a denial of justice, because the defendants do not know what the Government's proof will be, nor just which of the defendants are liable to be affected by any witness. It is necessary, therefore, for all of them to be present at this hearing. The defense of the officers and the alleged lynchers is not necessarily the same, and there is no one attorney in the case in a position to represent them all; so that it becomes necessary for most all the attorneys who have been actively engaged in these cases to attend these hearings. We say that there is no reason in the world why the witnesses for the Government should not tell the facts about this case at Chattanooga, Tennessee, just as freely as at any other place. And if after the hearing has commenced at Chattanooga, any witness is intimidated, the court has power to change the place of the hearing and also to punish the offending party, if such a case were possible. Public opinion is in a mood now to hear freely, frankly, and unreservedly all the facts of this case at Chattanooga without intimidation towards anybody.

To take these witnesses away from Chattanooga and deprive these defendants of the right to meet them face to face, as must necessarily result, is a great hardship upon them, and particularly so if they are innocent, as they claim to be, and especially on account of their poverty.

Many of these defendants have heretofore filed their affidavits showing that they are unable to pay the expenses of their own witnesses to the city of Washington, and they now appeal to your honors not to have this hearing at Washington, because it imposes hardships upon them that they cannot bear, and is as to some of them a denial of justice.

We most respectfully and earnestly insist that there is no sound reason or foundation for the argument that the witnesses for the Government will testify to facts in Washington, D. C., that they are unwilling to tell at the home of the witnesses and when surrounded by their own families and friends. Besides, the law is sufficient to protect the witnesses, and there ought not to be a precedent established by this court, that its commissioner or examiner was unable to get the truth out of witnesses because of the sentiment at the place of the hearing being reported as favorable to the accused when the law presumes the accused innocent of the charges against him.

We most earnestly submit that this honorable court should not make an order in these cases that will prevent the defendants from having the fullest opportunity to show their innocence in this case, and for that reason the motion of the Attorney General should be overruled.

Respectfully submitted,

GEO. W. CHAMLEE,
LEWIS SHEPHERD,
Attorneys.

FILE COPY.

FEB 2 1907

JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

[redacted]

No. 5 Orig
~~No. 12, Original.~~ O. T. 1907

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP ET AL.

The Answer of Joseph F. Shipp, Sheriff of Hamilton County, Tennessee, and His Deputies to the Suggestion of the Attorney General that the Testimony in this Case be Taken at Washington, D. C.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendants.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 25110

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 12, Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

The Answer of Joseph F. Shipp, Sheriff, and His Deputies, to Suggestion of Attorney General as to Taking Testimony.

The Attorney General asks this court to reconsider its order designating Chattanooga as the place of taking testimony in this case, and requests that the city of Washington be designated, at least for the purpose of taking testimony of witnesses for the United States.

And now come the defendants, Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. V. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, defendants, being the said sheriff and his deputies, and respectfully show to the court that the granting of said request would work great hardship upon them and might result in actual injustice.

These defendants were, at the time of the happening of the matters and things complained of in the information of the Attorney General, officers of Hamilton county, Tennes-

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 12, Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

The Answer of Joseph F. Shipp, Sheriff, and His Deputies, to Suggestion of Attorney General as to Taking Testimony.

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And now come the defendants, Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. V. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, defendants, being the said sheriff and his deputies, and respectfully show to the court that the granting of said request would work great hardship upon them and might result in actual injustice.

These defendants were, at the time of the happening of the matters and things complained of in the information of the Attorney General, officers of Hamilton county, Tennes-

see, sworn to uphold the law, and occupying positions which the public welfare required should be filled by persons who respected the law, and who would obey it.

The information not only charges them with failure to uphold the law, but with having become parties to a conspiracy to dethrone the law and substitute in its place mob violence, the antithesis of law.

A conviction of these defendants under the charges of the information involves not only the crime and infamy of perjury, but the guilt of conspiracy to murder.

These defendants have heretofore, prior to the filing of the information in this case, enjoyed the respect and confidence of their fellow-citizens, and it is of the utmost importance to them that their good names be not destroyed unless they are convicted after a full, fair, and impartial trial.

It is not the purpose of the United States to inflict wrong upon any of its citizens however humble. These defendants verily believe that the granting of the request of the Attorney General would do them grievous wrong. Every one of these defendants is entitled to be confronted by the witnesses against him. It has been shown by affidavits that many of them are not able to attend the taking of the testimony at Washington. It would be impossible for all of the counsel for all of the defendants to be present all the time, and a false witness might escape proper cross-examination, and might leave an impression of truth. The presence of the defendants, when witnesses for the prosecution are being examined, is an important right, one that should not be denied. The defendants are not only entitled to the aid of counsel, but counsel are entitled to the assistance of the defendants.

It is true these defendants rest under a charge which must be tried, but they submit that they are entitled to a trial which will give them the right to be present so that they may have the privilege accorded to the meanest criminal, of being faced by their accusers. This right will be practically denied should the testimony be taken in Washington.

The Attorney General suggests that it may be fairly assumed that it is not wholly without their own fault that these defendants are placed in the position in which they would be placed were his request granted, but these defendants are unable to reconcile this assumption with the presumption of innocence which the law accords to them.

Answering the further suggestion that Washington is the proper place for the hearing of testimony because the court sits at Washington for the whole United States, these defendants say that the Court has already decided that it will not hear oral testimony and has allowed counsel for both parties to nominate a Commissioner to take the testimony.

The suggestion contained in paragraph three (3) is equally without merit because it is impossible to conceive of this tribunal allowing separate hearings on every "unexpected incident which may readily occur during the examination of witnesses," it being the duty of the Commissioner to act upon exceptions to testimony, as well as "unexpected incidents."

Finally, these defendants solemnly deny the averments contained in the fourth paragraph of the suggestion of the Attorney General. They deny that there is any foundation in fact for the serious and unusual charge, confessedly based upon secret information to which neither the defendants nor this honorable court have access, that Chattanooga is, for any reason, an unsuitable place to take the testimony of witnesses. They deny that the real facts cannot be elicited there in "a calm and dispassionate atmosphere." They deny that the testimony would be colored or suppressed by local prejudice or any sense of personal insecurity, or that full and frank utterance of the truth by witnesses for or against these defendants would be "stifled or checked." Whatever may be the character of the "confidential information" to which the Attorney General refers, these defendants deny that any witness for the United States could reasonably, or would, in fact, entertain any apprehension whatever of danger if he testified at Chattanooga.

Defendants respectfully submit that the charges contained in said paragraph 4 that the feelings of the community are excited, that the truth would be suppressed from prejudice or from a sense of personal insecurity, or from any other cause, are based upon information of an unreliable character or upon a mistaken conception of the facts.

The "confidential" character of the information referred to by the Attorney General precludes an investigation of its reliability by these defendants; but in opposition thereto these defendants present herewith the affidavits of D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, Wm. L. Frierson, J. T. Moseley, T. S. Wilcox, G. G. Fletcher, and M. M. Allison, whose positions in the community indicate their character and standing.

Wherefore, these defendants and each of them, most humbly pray that the request of the Attorney General be denied.

JOSEPH F. SHIPP.
FRANK JONES.
MATTHEW GALLOWAY.
C. A. BAKER.
T. B. TAYLOR.
FRED FRAWLEY.
GEORGE BROWN.
JEREMIAH GIBSON.
MARION PERKINS.
JOSEPH CLARK.

JUDSON HARMON,
CLIFT & COOKE,
ROBERT PRITCHARD,
Attorneys for Defendants.

STATE OF TENNESSEE, *Hamilton County.*

Before me, the undersigned authority, this day personally appeared Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frawley, George Brown, Jeremiah Gibson, Marion Perkins, and Joseph Clark, the defendants above named, who being first duly sworn, deposed and say, that all and singular, the statements made in the foregoing answer are true to the best of their knowledge, information and belief.

JOSEPH F. SHIPP.
FRANK JONES.
M. L. GALLOWAY.
CHAS. A. BAKER.
THOS. B. TAYLOR.
GEO. W. BROWN.
M. PERKINS.
F. T. FRAWLEY.
JOSEPH CLARK.
JERRY GIBSON.

Sworn to before me and subscribed in my presence this 29th day of January, A. D. 1907.

C. L. HAYES, [SEAL.]
Notary Public.

STATE OF TENNESSEE, *Hamilton County:*

Before me, the undersigned, a notary public in and for the county and State aforesaid, this day personally came D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, W. L. Frierson, John T. Moseley, T. S. Wilcox, G. G. Fletcher, and M. M. Allison, who, after being duly sworn, severally deposed and said:

That they and each of them are citizens and residents of Hamilton county, Tennessee;

And the said D. L. Snodgrass deposes and says that he has resided in Chattanooga, Tennessee, for 24 years; that he is

the clerk of the circuit court of the United States for the eastern district of Tennessee; that he has held several political and judicial offices, having been for 16 years one of the judges of the Supreme Court of the State and for more than 8 years its chief justice;

And the said J. W. Bachman deposes and says that he has resided in Chattanooga, Tennessee, for more than 30 years, during all of which time he has been the pastor of the First Presbyterian Church of Chattanooga;

And the said C. A. Lyerly deposes and says that he has resided in Chattanooga, Tennessee, for more than 20 years, and has been connected with several financial and business establishments, being for 18 years the president of the Chattanooga National Bank, and that he is now the president of the First National Bank of Chattanooga;

The said W. L. Frierson deposes and says that he has resided in Chattanooga, Tennessee, for more than 16 years, where he has practiced law, and that he is now the mayor of the city of Chattanooga;

The said J. T. Moseley deposes and says that he has resided in Chattanooga, Tennessee, for more than 16 years, and that he is now the chief of police of said city;

The said T. S. Wilcox deposes and says that he has resided in Chattanooga, Tennessee, for more than 35 years, and that he is now president of the board of public safety of said city;

And the said G. G. Fletcher deposes and says that he has resided in Chattanooga, Tennessee, for 22 years, and that he is now the president of the chamber of commerce of said city;

The said M. M. Allison deposes and says that he has resided in Chattanooga, Tennessee, for more than 4 years, and that he is now, and for the past 4½ years has been the judge of the circuit court of Hamilton county, Tennessee;

And the said D. L. Snodgrass, J. W. Bachman, C. A. Lyerly, W. L. Frierson, J. T. Moseley, T. S. Wilcox, G. G. Fletcher, and M. M. Allison, each severally deposes and says that he is acquainted with the people of Chattanooga, and

the conditions and sentiments of the community; that he does not believe that any excitement, local prejudice or other conditions exist at Chattanooga, which would in any way tend to make it an improper place for taking the testimony of the witnesses in the case of The United States against J. F. Shipp and others; that he knows of no excitement in the community over this case, or over the Johnson case, which would tend to prevent a full and fair expression of truth by any witness that might be examined for the prosecution or the defense; that there is no danger and no reason to apprehend danger to any witness who may testify at Chattanooga, whatever may be his testimony; and no facts exist which would tend to produce any apprehension of danger on the part of any witness that may be called to testify there.

D. L. SNODGRASS.
J. W. BACHMAN.
C. A. LYERLY.
WM. L. FRIERSON.
J. T. MOSELEY, *C. P.*
T. S. WILCOX.
G. G. FLETCHER.
M. M. ALLISON.

Sworn to and subscribed before me, this 30th day of January, 1907.

[SEAL.]

T. T. RANKIN,
Notary Public.

FILE COPY.

Office Supreme Court, U. S.
FILED.
MAY 4 1908
JAMES H. McKENNEY,
CLERK

No. 5, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOHN F. SHIPP AND OTHERS, DEFENDANTS.

ANSWER TO MOTION FOR LEAVE TO TAKE ADDITIONAL TESTIMONY.

In the Supreme Court of the United States.

OCTOBER TERM 1907.

THE UNITED STATES OF AMERICA complainant, *v.* JOHN F. SHIPP AND OTHERS defendants. } No. 5, Original.

ANSWER TO MOTION FOR LEAVE TO TAKE ADDITIONAL TESTIMONY.

The defendants Joseph F. Shipp, Frank Jones, Matthew Galloway, C. A. Baker, Fred. Frawley and Marion Perkins, appearing by their attorneys Judson Harmon, Robert Pritchard, James J. Lynch, M. H. Clift and Robert B. Cooke; the defendants T. B. Taylor and George Brown, appearing by their attorney T. W. Stanfield; the defendant Jeremiah Gibson appearing by his attorneys Clift & Cooke; the defendant Joseph Clark appearing by his attorneys Spears & Lynch; the defendants Claude Powell, Nick Nolen, Chas. J. Powell, Bart Justice, John Jones, Henry Padgett, William May, John Varnell and Alfred Handman, appearing by their attorneys Lewis Shepherd and Shepherd & Fleming; the defendants "Sheenie" Warner and Luther Williams appearing by their attorney G. W. Chamlee; the defendant William Beeler appearing by his attorneys Ford & Chamlee and G. W. Chamlee; the defendants W. J. Cartwright and R. F. Cartwright appearing by their attorneys S. P. Maddox and John H. Early; the defendant Frank Ward appearing by his attorneys G. W. Chamlee and John A. Hood, and

the defendant William Marquette appearing by his attorney Joe V. Williams, answering the petition of the Solicitor General for leave to take additional testimony in this case say:

1. It is true that much proof has been taken in this case both by the Government and the defendants, and the defendants closed their proof in June, 1907; the report of the Commissioner has been made and the testimony opened, published and filed. It is likewise probably true that the Government made no effort to find additional evidence after the closing of the testimony.

2. These defendants take it for granted that the statement that the Department of Justice has received the information set out in the motion is true. But they call the attention of the Honorable Court to the vague and meagre statements of the motion upon this subject. The names of the two persons who are supposed to have been eye witnesses of "part of the incidents connected with the lynching of the prisoner Ed. Johnson" are not given. The nature of the "part of the incidents" they saw is not stated. The names of the "two defendants" whom it is supposed these witnesses "could identify as connected therewith" are not given.

3. While these defendants submit that they are entitled to be furnished with the names of the two witnesses, they do not insist upon this because the motion suggests that "these two parties did not previously make known their knowledge of these facts in reference to this matter on account of fear." Defendants aver that nothing whatever has occurred, so far as their knowledge or information extends, to

support the suggestion that any concealment of facts has been induced by fear of any sort.

4. But there are many defendants to the information in this case and many of them have separate defenses and the defendants are not all represented by the same counsel. The defense has been onerous and expensive. It is inferrible from the statements of the motion that only two defendants will be interested in the additional testimony sought to be taken. To save the expense of the attendance of all the defendants and the attorneys for all of them, these defendants respectfully submit that they are entitled to be furnished with the names of the two defendants who will be affected by the proposed additional testimony. After the testimony of the two witnesses in question shall have been taken, the defendants affected thereby should have reasonable time within which to collect and adduce evidence in rebuttal.

Defendants therefore offer no resistance to the motion further than to insist that before it is allowed they should be furnished with the names of the two defendants whom it is proposed to identify by the witnesses, and that such additional time be allowed as may be necessary for collecting and adducing rebuttal evidence.

Respectfully submitted,

JUDSON HARMON,
ROBERT PRITCHARD,
JAMES J. LYNCH,
M. H. CLIFT,
R. B. COOKE,
Attorneys for Joseph F. Shipp, Frank

Jones, Matthew Galloway, C. A. Baker, Fred Frawley and Marion Perkins.

T. W. STANFIELD,
Attorney for T. B. Taylor and Geo. Brown.

CLIFT & COOKE,
Attorneys for Jeremiah Gibson.

WILLIAM D. SPEARS,
JAMES J. LYNCH,
Attorneys for Joseph Clark.

LEWIS SHEPHERD,
T. P. SHEPHERD,
M. A. FLEMING,
Attorneys for Claude Powell, Nick Nolen, Chas. J. Powell, Bart Justice, John Jones, Henry Padgett, Wm. May, John Varnell and Alfred Handman.

G. W. CHAMLEE,
Attorney for Sheenie Warner and Luther Williams.

G. W. CHAMLEE AND
FORD & CHAMLEE,
Attorneys for William Beeler.

JOHN H. EARLY,
S. P. MADDUX,
Attorneys for W. J. Cartwright and R. F. Cartwright.

G. W. CHAMLEE,
JOHN A. HOOD,
Attorneys for Frank Ward.

JOE V. WILLIAMS,
Attorney for William Marquette.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant, *vs.* JOSEPH F. SHIPP, ET AL. } No. 5, Original.

REPLY BRIEF FOR J. F. SHIPP.

May It Please the Court:

On the 28th day of May, 1906, the United States of America, through its Attorney-General, filed in this Court an information against the defendants, J. F. Shipp and others, charging them with being guilty of contempt of this Court. After setting out the fact that Ed. Johnson had been indicted and tried on a charge of rape in the Circuit Criminal Court of Hamilton County, Tennessee, convicted and sentenced by said Court to be hanged, as set forth in the proceedings in said cause, that said Johnson filed, on the 3rd of March, 1906, a petition for writ of *habeas corpus* in the United States Circuit Court for the Northern Division of the Eastern District of Tennessee, alleging certain things not necessary to set out here, asking a writ of *habeas corpus* and to be released from imprisonment; that this petition was by said Court denied and proceedings stayed for ten days

and the prisoner remanded to the jail of Hamilton County to await further action in said cause. Thereafter, on the 17th of March, 1906, application was presented to Hon. John M. Harlan, Associate Justice of this Court, asking that an appeal be allowed to this Court from the judgment rendered by said Circuit Court, March 10th, 1906, denying said writ of *habeas corpus*, which was allowed by said Justice, and thereafter, on the 19th of March, 1906, a motion was made in this Court for an order allowing an appeal, which was granted.

It is alleged in said information that on the 19th of March, 1906, after making said order, the Clerk of this Court notified defendant Shipp, sheriff of Hamilton County, of the making of said order and stay of proceedings against Johnson by said Court, and that he should retain custody of said Johnson pending said appeal; that this information was received by said sheriff before 6 o'clock on the evening of March 19th, 1906, and that the proceedings were published in said city giving a full account of this action of this Court.

The information then charges that defendant Shipp, as the Sheriff of Hamilton County, Tennessee, was the custodian of the jail of said County in which said Johnson was held a prisoner. The names of several of the sheriff's deputies are set out. The information then charges:

> "That said sheriff and deputies, on the said 19th of March, 1906, after being advised of the action of this honorable court, were informed and had every reason to believe from current reports, rumors

conveyed to them and each of them, that an attempt would be made on the evening of said day or early in the morning of the following day by a mob composed of a *large number of armed men* to force an entrance into said county jail for the purpose of taking therefrom by violence and unlawful means the said Ed. Johnson and putting him to death; that notwithstanding said rumors and said reports, which were conveyed to said sheriff and his deputies as aforesaid, the said sheriff withdrew from said jail early in the evening of said day the usual and customary guard and left in charge thereof only the night jailor, to-wit, Deputy Sheriff Jeremiah Gibson, and committed other acts and did other things evincing a purpose and disposition on the part of said sheriff to render it less difficult and less dangerous for said mob to prosecute and carry into effect its unlawful design and purpose, to-wit, the lynching of said Ed. Johnson, designed and planned as aforesaid."

(*See Par. 4, Information, R. p. 4.*)

It is further charged that the defendant Shipp, together with his deputies, and a large number of other persons, some of whose names were set forth in the information, and others who were alleged to be unknown to complainant, did unlawfully and wrongfully combine, conspire, confederate, and agree together to break and enter the county jail of Hamilton County for the purpose of taking the person of the said Ed. Johnson to lynch and murder him.

It is further charged that, between the hours of nine and twelve on the evening of March 19th, 1906, a large number of persons, including the defendants named in the information, with the exception of the defendant Shipp and his depu-

ties, formed a mob and unlawfully and wrongfully entered the jail of Hamilton County, Tennessee, with force and arms, broke open the cell in which the said Ed. Johnson was confined, took him forcibly from said jail, and killed him, and it is charged that this defendant Shipp and his deputies were in sympathy with the mob and " did in truth and in fact aid and abet said mob in the performance of said unlawful act in lynching and murdering said Johnson."

Defendant Shipp (as well as his deputies) filed an answer specifically denying each and every allegation made against him in said information. All the preliminary questions of law involved in this case have heretofore been settled by this Court (*203 U. S.*, 563.)

This Court appointed the Hon. James D. Maher special commission to take the proof in this case at Chattanooga, Tennessee, and a great volume of testimony has been taken and a large number of witnesses introduced by both sides.

In their brief, counsel for the Government, at page 5, state the issues tersely as follows:

> 1st. "Were the sheriff and his deputies informed and did they have every reason to believe that an attempt would be made in the evening of March 19th, by a mob, to break into, and take Johnson from the jail for the purpose of lynching him?
>
> 2nd. "Did the sheriff and his deputies commit acts and do things manifesting a purpose and disposition on their part to render it less difficult and less dangerous for the mob to lynch Johnson and aid and abet the mob?
>
> 3rd. "Were the defendants, excepting Shipp

and Gibson, members of the mob which lynched Johnson, or did they participate in the conspiracy?

4th. "Did defendants in the things they did intend to show contempt of the order of this court and to prevent it from hearing Johnson's appeal?"

The third issue thus tendered by the Government does not refer to the defendant Shipp. We will discuss these issues in the order thus presented by the counsel for the Government.

DID SHERIFF SHIPP EXPECT THE MOB ON MARCH 19TH.

Or, as stated in the brief of counsel for the Government:

> *"Were the sheriff and his deputies informed and did they have every reason to believe that an attempt would be made in the evening of March 19th by a mob to break into, and take Johnson from, the jail for the purpose of lynching him?"*

The record in this case shows that the Government sent agents and detectives to Chattanooga and Hamilton County, and investigated this case thoroughly with every possible facility for ascertaining the exact facts of the case. Many weeks were consumed in the examination of witnesses in Chattanooga, yet the Government absolutely failed to establish, by any proof, this insistence. On the contrary, the testimony of practically every witness who testified on this subject, including many of the very best citizens of Chattanooga, clearly establishes the fact that there was no thought of a mob on March 19th, and that no one apprehended any

mob violence at that time. On this subject counsel for the Government, in their brief (page 23), say:

> "But the evidence tending to show that a lynching was not expected to occur on the 19th, *if not knowingly false*, establishes great ignorance of the witnesses as to actual conditions. *It is utterly unreasonable to say that the lynching of Johnson was not expected to occur then.*"

Who are the witnesses who fall under this severe criticism and condemnation of the counsel for the Government?

We will briefly refer to the testimony of a few of them:

Judge C. D. Clark, Judge of the United States District Court for the Middle and Eastern Districts of Tennessee, testified that he had lived in Chattanooga continuously from 1883. He heard Ed. Johnson's application for writ of *habeas corpus*, denied the same and granted the ten days' stay of execution. He was asked:

> Q. "Judge, did anything occur at that time, was anything said at the trial on the part of the representatives of the State, or on the part of anyone, that caused you to apprehend any mob violence to this man?"
>
> A. "Not in the least."
>
> Q. "I will ask you after you returned to Chattanooga, after Judge Harlan granted his order, and after the appeal was granted by the Supreme Court, if that order of the United States Supreme Court and of Judge Harlan caused you to apprehend any mob violence?"
>
> A. "*No, sir; it did not.* I will tell you what did occur. On account of the decidedly emphatic charges in the petition and some statements that were

made on the trial by certain witnesses to the effect that the attorneys for the defense had been to an extent intimidated in making the defense for fear the colored man would be lynched if they interposed the defense — this went mainly to the jury question and how it was made up — I asked my secretary on the day that I was h[illegible] Monday, on my way to St. Augustine, if he [illegible]rd of any suggestion or hint of any violence o[illegible]atisfaction with the situation; and he told me he had not."

Judge Clark notified the attorneys for the defendant that he would remain in Chattanooga until Friday night. He also notified the State's officers to consider Johnson in the custody of the United States Government.

Again Judge Clark was asked:

Q. "I will ask you, Judge, if you had apprehended danger to the man, or if application had been made to you, if you would not have ordered his removal to some other jail?"

A. "If it had appeared that the prisoner was in real or great danger, if that had appeared to me, I am quite sure I would have made the order of my own motion. I would have called up his attorney and suggested that he make the application for his removal. I am telling you now how I think I would have acted in such a situation as that."

R. pp. 879, 880, 881.

T. S. Wilcox, Chairman of the Board of Public Safety, was examined as a witness on behalf of the Government against the defendants. Mr. Wilcox was at the head of the police department in Chattanooga and it was his duty to look after the preservation of peace and good order in the

city; and who, more than any other man, perhaps, in the city, was in a position to know the state of public feeling, and whether or not a mob was to be expected at the time Johnson was lynched. On cross-examination he was asked:

> Q. "At the time Johnson was actually taken out, Mr. Wilcox, and at some time prior to that, I will ask you if the state of public excitement had not subsided?"
>
> A. "Yes, sir; that is, to the best of my knowledge. It looked that way to me."
>
> Q. "I will ask you if there was any public or general apprehension or any belief that Johnson would be lynched, and whether or not the lynching of Johnson did not come as a great surprise to the public?"
>
> A. "It did to me."
>
> Q. "Had you suspected anything of the sort?"
>
> A. "No, sir."
>
> *R. pp.* 376.378.

A. J. Ware was introduced as a witness by the Government, and his testimony is relied upon by the Government, perhaps, more than that of any other witness introduced against the defendants. On cross-examination, he was asked:

> Q. "The excitement had all subsided practically at that time in regard to this rape, had it not?"
>
> A. "Well, it was not like it had been."
>
> Q. "You were not expecting any lynching?"
>
> A. "No, sir."
>
> Q. "And the public were not expecting any lynching, so far as you knew?"

A. "I think not."

Witness stated that he was a justice of the peace, and a great many people congregated at his office, and there was no public excitement that led him to expect any trouble or violence.

R. pp. 397, 398.

Dr. A. W. Boyd (*R. pp.* 502, 503), Dr. Cooper Holtzclaw (*R. pp.* 570, 571), Dr. M. J. Lewis (*R. p.* 794): These gentlemen are all practicing physicians and had all practiced in Chattanooga for many years. In their practice, each came constantly in communication with all classes of people, and all of them testified that there was no excitement on March 19th, and they heard no talk or suggestion of mob violence, and that the people of Chattanooga did not expect a mob at that time.

Rev. J. W. Bachman, the pastor of the First Presbyterian Church in Chattanooga, who had lived in Chattanooga and held that position for thirty-four years — the unquestioned head of the Chattanooga priesthood and the most beloved citizen in Chattanooga — testified that his office was very near the jail; that he mixed and mingled with the citizenship of Chattanooga generally and with all classes of people; he had taken great interest in the case and had been consulted, as an old citizen, by the sheriff and judge of the Criminal Court about protecting the prisoner and insuring him a fair trial. His testimony shows that he kept up with the case and was in a position to know the state of public feeling in Chattanooga. He was asked:

Q. "Was there anything, in your judgment,

knowing the public as you did, to cause a reasonably prudent officer to suspect that Johnson was in danger of being lynched at the time he was lynched?"

A. "I would not think so at all. I had no thought of it, and I did not know of any man at the time that had any thought of it. *It was a surprise to us all — a very great surprise.*"

R. p. 926.

Rev. Ira M. Boswell, the pastor of the Walnut Street Christian Church, of Chattanooga, Tennessee, testified that he had been pastor of this church four years and was a member of the Pastors' Union, an organization of the evangelical ministers of the city; also, a member of the Law and Order Committee of this Union, whose duty it was to investigate the violations of any law and the general welfare of the city; and also a fraternal delegate to the Central Labor League of the city, an organization composed of delegates from all the labor organizations in the city. He also preached regularly at the large manufacturing shops in the city. In this way, Dr. Boswell kept in touch with the public sentiment in Chattanooga and was certainly in a position to know the situation at the time this lynching occurred. He was not in sympathy with the mob; on the contrary, had preached a sermon denouncing the first mob that attempted to lynch Johnson. The witness stated:

"I never dreamed there was anything like a lynching would take place; no one else had mentioned it."

R. pp. 866 *to* 871.

Rev. W. C. Robertson, Rector of the Episcopal Church in Chattanooga, testified that in his pastoral work he came

in contact with all classes of people in the city, and that the lynching of Ed. Johnson was a surprise to the people of Chattanooga; that nothing had occurred to cause any apprehension or fear of a mob at that time.

R. pp. 938-940.

Mr. L. G. Walker, editor of *The Chattanooga Times*, the leading morning daily of East Tennessee, and an important witness for the Government in this case, testified on cross-examination that he neither saw nor heard any indications of a mob on the day of the lynching, nor on the evening of the lynching, and that nothing had occurred to cause any apprehension on his part.

R. p. 199.

Mr. Robert A. Pritchard, the city editor of *The Chattanooga Times*, whose duty it was, of course, to gather up all the news and keep in touch with the public affairs generally in the city of Chattanooga, testified that he spent the day on which the lynching occurred around town in the city of Chattanooga, and that the order of the Supreme Court granting Johnson an appeal was discussed very little on the streets that day and caused no excitement whatever. He was asked:

Q. "In your rounds that day and that afternoon, did you hear any suggestion of a mob?"

A. "No, sir."

Q. "Or any danger to Johnson?"

A. "No, sir; I did not hear anything of the kind."

R. p. 888.

Mr. A. N. Sloan, a prominent insurance man, Grand Master of the Masonic Order of the State of Tennessee, and an old resident of the city, testified that his business kept him in touch with all classes of people, that there was no excitement in the city on March 19th in reference to the Johnson case, and nothing had occurred that could lead anyone to suspect that Johnson would be mobbed.

R. pp. 505, 507.

To the same effect is the testimony of:

O. G. Stone, an attorney. *R. p.* 802.

Oscar Yarnell, an attorney. *R. p.* 787.

Thomas H. Payne, a merchant on one of the most public streets in the city, member of the Excise Commission, and member of the School Board of the city. *R. pp.* 942 *to* 945.

R. H. Parrent, a prominent merchant. *R. pp.* 945-948.

James A. Caldwell, an attorney. *R. pp.* 954 *to* 955.

John B. Nicklin, a merchant. *R. pp.* 955 *to* 960.

F. H. Dowler, agent of the Nashville, Chattanooga and St. Louis Railway for eighteen years. *R. pp.* 961 *to* 964.

P. A. Brawner, a manufacturer who employed 450 men. *R. pp.* 965 *to* 971.

Charles Herron, a manufacturer employing about 350 men. *R. pp.* 971 *to* 975.

William E. Love, a manufacturer employing from 75 to 100 men. *R. pp.* 975 *to* 978.

These manufacturers all testified that they constantly mixed with and talked to their employes and that they heard no talk or suggestion of a mob and were all surprised at the

lynching of Johnson, as they had all thought the mob spirit had entirely passed away.

Dr. P. D. Sims, the city physician of Chattanooga, who had lived in the city fifty-one years, and whose profession, as well as his official position, brought him in constant contact with people of all classes, testified to the same situation.

R. pp. 979 *to* 988.

Samuel T. Dewees, a merchant, proved the same facts.

R. p. 990.

John H. Cantrell, a prominent attorney at the Chattanooga bar and a member of the committee that had been appointed by Judge McReynolds to confer with the attorneys for Johnson, after his conviction in the State Court, to decide whether his case should be appealed, and who had necessarily given the case in its various phases close attention, testified that he saw no disposition to lynch Johnson or any indication of a mob after he was sentenced by Judge McReynolds.

R. p. 1005.

M. N. Whitaker, the Attorney-General for the Chattanooga District, who prosecuted Johnson and who kept in close touch with the case from the beginning, testified that he did not apprehend any mob violence at the time Johnson was lynched. Among other thing, he said:

> "I saw no reason to apprehend mob violence to this prisoner after he was convicted by the court and jury, and from that time on up until he was mobbed, and the night he was mobbed, it was a very great surprise and shock to me."

R. p. 874.

S. D. McReynolds, Judge of the Criminal Court at Chattanooga, testified that he was holding Criminal Court at the Court House in Chattanooga on March 19th; that he mixed and talked with the various officers of his court and jurors from various parts of the County; and the usual habitues of the Criminal Court, as well as the attorneys, and that he saw and heard nothing that caused any apprehension of mob violence.

R. pp. 897, 898.

Various other witnesses testified to the same facts and the same general situation.

Here, we have the testimony of the representatives of every class of people, who were in a situation to know, and who must have known, whether there was any excitement in Chattanooga; whether there was any mob spirit manifested on the streets there; whether there was any talk of, or apprehension of, mob violence on March 19, 1906.

These men all agree that no mob was expected and that there was nothing in the situation on that day that caused them, or that should have caused the sheriff to expect the mob that lynched Johnson.

Aside from argument and denunciation, what evidence has the Government produced that Capt. Shipp anticipated a mob on the night of March 19th?

It is said that Capt. Shipp, himself, admitted to a reporter that he expected a mob on the 20th and, hence, should have been prepared on the 19th. To sustain this, the Government relies upon an alleged interview that appeared in *The*

Birmingham Age-Herald, written by a reporter by the name of Evans, based upon a casual conversation with Capt. Shipp and written some hours thereafter.

R. pp. 271, 272.

In this interview, Capt. Shipp is quoted as saying:

> "I had looked for no trouble that night; on the contrary, did not look for it until the next day."
> *R. p.* 269.

On being cross-examined as to this alleged interview, the reporter was asked:

> Q. "Capt. Shipp stated to you, among other things, that he had no expectation of any trouble whatever that night, did he?"
>
> A. "Yes, sir; I think he said that."
>
> *R. p.* 272.

The only other witness on the subject of the anticipation of a mob on Tuesday, March 20th, was J. L. Chivington, the leading witness for the Government in this case, who was asked by counsel for the Government:

> Q. "Mr. Chivington, in reference to the matter you have been asked about with regard to the apprehension of a mob, did you have any reasons in your rounds to apprehend that if Johnson was not hung in accordance with the original order of the State Court on the morning of the 20th, that there would be a mob?"
>
> A. "Yes, sir; my opinion on that Monday and on that night up until the time I heard of this mob, was that if the State Court sentence was not executed on Tuesday morning, that a mob could be reasonably expected on Tuesday night."
>
> *R. p.* 238.

As to what caused this apprehension, he states:

> A. "Yes, sir; I heard people say they were anxious to see what would be done between nine and twelve o'clock on Tuesday. I heard them say that."
>
> *R. p.* 239.

To show that this was all that caused this apprehension, we refer to other parts of the same witness' testimony as follows:

> Q. "After the paper came out, were you on it that day?"
>
> A. "Yes, sir; I was on it all day" (referring to Monday, the day of the lynching.)
>
> Q. "Did you go around the city in performing your reportorial duties?"
>
> A. "Yes, sir."
>
> Q. "Did you mingle with the people?"
>
> A. "Yes, sir. I was in the courts that day. I think the criminal court was in session. I think I was in court."
>
> Q. "I will ask you whether or not the publication of this article on the morning of the 19th created any excitement?"
>
> A. "No excitement that I saw or heard of."
>
> Q. "Did it arouse any mob spirit or anything of the sort so far as you were able to discover in your rounds?"
>
> A. "*No, sir; I did not hear anything about any mob all day.*"
>
> Q. "You had the Johnson case in charge?"
>
> A. "Yes, sir."

Q. "It was your business to look after matters or that sort?"

A. "Yes, sir."

Q. "And you did do it?"

A. "I tried to — yes, sir."

Q. "*If it had created any such excitement or any such spirit, it would have been your business to have ascertained it?*"

A. "*Yes, sir.*"

R. p. 236.

It was further shown by this witness that the girl, who was the victim of the outrage in question, lived some three miles from the city, and that the first mob came from out in the country, east of Missionary Ridge.

R. p. 239.

The Government's counsel show in the examination of this witness that it was reasonable to suppose that any mob that might have been expected would come from out in this neighborhood. In other words, would come from the country people — neighbors of the victim.

It will be remembered that Mr. Justice Harlan granted the first order on the 17th of March. Notice of this was received in Chattanooga on the 18th of March and publication made for the first time in Chattanooga on March 19th. The notice of the action of this Court was received in the afternoon of the 19th. So that if Capt. Shipp did say that he expected there might be trouble on the 20th, just as Mr. Chivington seemed to apprehend, *and that he expected no trouble until that time*, his reasoning was based upon the

idea that the country people would, in all likelihood, not hear or know of the delay in the execution of Johnson until Tuesday, when they would learn that Johnson was not to be executed. And in no event would they attempt mob violence until the time of executing the sentence of the State Court had passed, and this was exactly the reasoning of the Government's leading witness, Mr. Chivington.

It will be noticed that Mr. Chivington, who had this case in charge for *The Chattanooga Times*, and whose duty it was to sound the public sentiment and keep constantly in touch with all phases of the case, and who had mixed with all classes of people on the day of the 19th, heard absolutely no suggestion of a mob, and the only thing he did hear which caused any apprehension whatever, were the statements he refers to of some people who said they wanted to wait and see whether Johnson was hanged on Tuesday. This was not very strong evidence to cause even the most suspicious to have an apprehension that trouble might come even on Tuesday.

No one in the whole community seemed to have even this apprehension, save Mr. Chivington, with the possible exception of Captain Shipp, himself, and both of these gentlemen — one the leading witness for the Government, and the other the defendant — each swear that they had absolutely no apprehension of trouble on the night of March 19.th

The testimony of Julia Woolford, colored, is relied upon. She was a servant in Capt. Shipp's home and testified that she heard Capt. Shipp say one day at the dinner table,

"that if the execution would be stayed, Ed. Johnson would be mobbed."

R. p. 289.

She says that Mr. and Mrs. Hardin, Mr. and Mrs. Myer and Captain and Mrs. Shipp were all present when this conversation occurred.

R. p. 394.

This is denied by all of these parties.

R. pp. 1012, 1014, 1016.

And by Capt. Shipp, himself.

R. p. 1105.

Capt. Shipp states that his wife was in bad health and he purposely refrained from even discussing in her presence the Johnson case, or any other matter that would cause her to be nervous or apprehensive of trouble.

He said that if he had apprehended trouble, she would have been the last person in the world he would have mentioned it to.

Certainly this Court will not disregard the testimony of these respectable witnesses in order to believe the improbable story of a discharged servant as to what she pretends to have overheard of a casual conversation in a family circle.

It is insisted, however, that Capt. Shipp should have anticipated trouble because on the 25th day of January, a mob assaulted the jail and attempted to lynch Johnson.

It is true when the people of Chattanooga and vicinity learned of the horrible outrage that had been perpetrated on an innocent white girl, they were stricken with horror and

indignation, and a mob did attempt to lynch Johnson. This attempt would probably have succeeded but for the vigilance and *foresight* of Capt. Shipp, in taking the negro to Nashville immediately after he was arrested. All the evidence shows, however, that this intense excitement that at first swept over the community, had subsided and entirely passed away.

It is insisted that the abhorrence of the crime did not pass away. This is true, and in the years to come, it will not have passed away. The members of this court today feel the same abhorrence of the crime that the people of Chattanooga feel, but that does not mean that the abhorrence of the crime will drive men to wreak summary vengeance and make them criminals. When the crime was first committed, while the people were excited and maddened by the first news of it,—then the thoughtless, the reckless and the criminal classes took advantage of this public excitement and general indignation and attempted to lynch Johnson. But the excitement subsided and the public generally came to take a rational and sensible view of the situation, and when this occurs the reckless, the thoughtless and lawless usually do not dare to take the law in their own hands.

As a rule, lynchings do not take place months after the crime has been committed by the victim of the mob. One witness said that he had never known of a lynching that did not occur immediately after the commission of the crime that caused the lynching.

This is a matter of common knowledge.

In this case, the crime was committed on January 23d. The mob attempted to lynch the accused on January 25th. On February 6th, thereafter, the prisoner was brought to Chattanooga and tried. At first, he was heavily guarded, but it was soon discovered that the mob spirit had entirely passed away even at that early time, and that no attempt would be made to lynch him. After his conviction, the criminal judge told the sheriff that he might safely leave the prisoner in the jail at Chattanooga, and if he removed him to another jail, he must do so without an order of court, as he (Judge McReynolds) thought the prisoner would be entirely safe in Chattanooga.

R. p. 895.

But as an extra precaution and because he, himself, was utterly worn out and sick, Capt. Shipp placed the prisoner in the jail at Knoxville, where he remained until the *habeas corpus* proceeding before Judge Clark. Notwithstanding the fact that Judge Clark and the Governor stayed the execution for ten days, the prisoner was brought to Chattanooga and placed in jail and kept there without any extra guard from March 11th — eight days before the lynching — and not the slightest attempt was made to do him violence nor the slightest suggestion of a mob heard. So that necessarily, we are correct in insisting that so far as could be seen by a usually prudent person at the time, the mob spirit had entirely passed away.

But it is insisted that Capt. Shipp should have assumed that the action of this Court in granting an appeal would

have aroused public indignation and renewed the mob spirit.

When this Court took jurisdiction, Capt. Shipp understood that Johnson then became a Federal prisoner — protected by the Federal Government. Did he have a right to assume that the lawless element would more readily defy both the Federal and State Governments than the State Government alone?

On the contrary, Capt. Shipp felt that the assumption of jurisdiction by this Court was an added protection to the prisoner.

Judge Clark stated that the people of Chattanooga and East Tennessee generally have always shown the greatest respect for the Federal Courts and its orders and process.

R. p. 882.

Attorney-General Whitaker said:

> "*On account of the great respect of the people for the Federal Government, I would have thought that the action of the Supreme Court in this case would have guaranteed greater safety to the prisoner. That is my opinion.*"
>
> *R. p.* 848.

Rev. Dr. Boswell (*R. p.* 870 *and* 871), and W. E. Love, a manufacturer (*R. p.* 977), expressed the same view.

When asked, if, in his judgment, the granting of an appeal and the taking of jurisdiction by this Court increased Johnson's danger, Mr. Love answered:

> "*I considered that he would be safer because we are sort of afraid of Uncle Sam;* and generally,

> the parties that *do mob, are the bummers, so to speak*, and more afraid of the United States Courts than they are of our local Courts."

SHERIFF SHIPP'S CONDUCT.

The second issue, as set out in the brief for the Government, is as follows:

> "*Did the sheriff and his deputies commit acts and do things manifesting a purpose and disposition on their part to render it less difficult and less dangerous for the mob to lynch Johnson, and aid and abet the mob?*"

Is there anything in Capt. Shipp's conduct that can justify such an attack?

When Johnson was arrested, the sheriff exercised the highest degree of caution and consideration for the prisoner's safety. He took the prisoner immediately out of town — first to Dayton, then to Nashville — where he kept him until the trial, in the early part of February. He brought Johnson back and guarded him during the trial and at the conclusion of the trial, though assured by the criminal judge that the prisoner would be entirely safe in the jail at Chattanooga, the sheriff, being sick and worn out, took the prisoner to Knoxville and kept him until the *habeas corpus* proceeding before Judge Clark. He then brought the prisoner back to Chattanooga. Fearing an incendiary publication, he understood would be made, might cause some excitement and trouble, he arranged to have his deputies meet him at Citico Junction, near Chattanoga, and take his prisoner off the train at that place. He learned, however, that his ap-

prehensions were unfounded and that no one would have attempted violence to the prisoner if he had taken him on to the Central Station.

R. pp. 1094, 1103.

These facts are not disputed. In doing all this, did Capt. Shipp show a disposition to aid and abet a mob in the lynching of Johnson? Having saved Johnson's life from one mob, why should we assume that he would aid and abet another mob in lynching him? No possible motive is shown why he should thus change his attitude towards the prisoner.

It is argued, however, that Sheriff Shipp was a candidate for re-election, and that he aided the mob for political purposes. He was a candidate when the first mob attempted to lynch Johnson. If he dared defy the mob when the excitement was at its worst, when the people of the whole county were in a fever of indignation, why should he aid the mob when the excitement had subsided?

In the brief for the Government, it is said that 1,600 to 1,800 were in the first mob, and that only a few were in the last. If Capt. Shipp dared defy so large a mob, and if his deputies used violence in driving off so large a mob, as it is conceded they did, without fear of political consequences, what political reward could come to him from aiding the few men who composed the last mob?

The victim of the outrage of which Johnson was accused, did not belong to a prominent or influential family, that had a very wide circle of friends. She belonged to an humble though respectable family of northern people, who had re-

cently moved into Chattanooga — her father, an old federal soldier, was engaged in guarding the Forest Hill cemetery.

R. p. 916.

But how could it aid Capt. Shipp's political fortunes to aid or abet a mob in the murder of one of his prisoners? Surely there were too few engaged in the mobbing of Johnson for the votes of the lynchers to be of any great value. Surely it will not be insisted that Capt. Shipp could aid himself politically by having the people of the County understand that he betrayed his trust and aided in the commission of a crime.

The newspapers of Chattanooga were, and have always been, bitterly opposed to mob law — the law-abiding people there, as well as everywhere else, are opposed to mob violence in any case. No intelligent people would trust a man in the important office of sheriff who would betray his trust and assist in the murder of a helpless prisoner.

Can the Court imagine a community in America where public sentiment is so depraved, where the people are so low, that any man would dare go before the public for endorsement admitting that he had assisted or aided in the murder of his own prisoner? Can the Court imagine any community in which the lawless element is in a majority or where a majority of the voters would sustain a man whom they believed had assisted or aided in any way in the murder of one of his prisoners?

The record shows that there is a large colored vote in Chattanooga that is an important factor in the elections in

that city and county. Surely Capt. Shipp did not expect to strengthen himself with these voters by assisting in the murder of a colored prisoner. It is shown that Hamilton County has a cosmopolitan population — made up of people from the north, south, east and west. That there is a large independent vote in Hamilton County. That the offices in Hamilton County are usually divided about equally between the democrats and republicans, so that each party must put forth its best men in order to hope for success.

R. pp. 920, 921.

Surely in a typically American community, such as this is shown to be, an officer could not hope for success on account of the betrayal of his trust, or by aiding in the assassination of his prisoner.

Capt. Shipp is criticised because he went to the jail on the night of the lynching. Let us see how this occurred:

Attorney-General Whitaker and Judge McReynolds, walking along the street about 9 o'clock, noticed a suspicious gathering near the jail? They immediately went to the editorial rooms of *The Chattanooga Times*, and Attorney-General Whitaker called Capt. Shipp at his residence and directed him to go to the jail at once. This is shown by Attorney-General Whitaker (*R.* p. 850); Judge McReynolds (*R.* p. 900), and L. G. Walker, editor of *The Times* (*R.* p. 109.)

The sheriff, when he was called, immediately attempted to call the jail over the 'phone. He got no response, and he immediately apprehended that the 'phone had been torn out

by the mob at the jail. He hurriedly got his coat and hat and started for the jail, running most of the way. He says:

"Just as I got opposite the jail, and just before turning into the walk leading up to the office, I saw five or six men standing out in the middle of the street, and without stopping, going rapidly, I made the remark, 'What is the matter?' No one answered at all. Then I went up the walk and found quite a number of men on the walk and on the steps leading into the office. I made my way through the crowd, shoving them on one side, and got into the office. As soon as I got in, I saw the iron door — outside door — was open. I entered rapidly, and just as I reached the inside of the door, *I saw Mr. Gibson sitting back against the wall with three or four men standing around him.* I had started over to make some inquiries of him, *and just at that time, I was seized fro mbehind by several men* — I don't know how many. When they seized me, I did not know but what they were going to do me some violence, and *I reached back for my gun, which I had in my pocket.* They assured me that they did not intend to hurt me. I was somewhat indignant and stated to them that I wasn't afraid of their hurting me. *They rushed me up the steps and carried me into the hallway that is about the level of the floor that Johnson was on and through which there is a drag which we feed the prisoners by, and stood over me there with a guard during the progress of the work.* They were hammering; I heard them hammering on the door when I entered the office."

Q. "State whether or not you were *kept prisoner there by these people until after they had got Johnson and left the jail with him?*"

A. "*Yes, sir; I was.*"

Q. "I will ask you if, when you reached the jail, you were exhausted from your run, and what the distance is from your house to the jail?"

A. "Well, it is four or five blocks. Yes, sir, I was very much exhausted. I had been under the care of the physician. I had been suffering with intestinal indigestion and was under the care of Dr. Ellis at that time."

R. p. 1106.

Mr. J. L. Chivington, a witness for the Government as to Capt. Shipp's conduct on entering the jail, testified as follows:

Q. "Now, going back a little again. When Sheriff Shipp came to the jail, he was alone?"

A. "Yes, sir."

Q. "Did he move rapidly forward?"

A. "He was running when I saw him."

Q. "He was running? How did he get through the crowd? Did he push himself through, or how did he get through?

A. "He shoved the men aside."

Q. "Shoved them back and entered?"

A. "Yes, sir."

Q. "Did he go at once forward?"

A. "Yes, sir; he never stopped."

Q. "As rapidly as possible — as rapidly as he could get through the crowd?"

A. "He never stopped until he got to that inside door."

Q. "Did he go immediately upstairs where the noise was, or how did he get upstairs?"

A. "No, sir; they carried him upstairs."

Q. "How did they do it? How many men seized him?"

A. "Four or five."

Q. "What did he say to the mob? Did he ask them to disperse?"

A. "Yes, sir; he asked them several times to disperse."

Again, he says:

"He appealed to them not to mob the negro."

R. pp. 232, 233.

Joseph R. Curtis, another reporter on *The Chattanooga Times*, and a witness for the Government, testified as follows:

Q. "Did Capt. Shipp appear on the scene?"

A. "Yes, sir; he came about 9 o'clock; maybe a little after that."

Q. "What did you see him do?"

A. "I did not see him until he was brought up on the second floor. Several of the members of the mob had him by that time, and they brought him up to the second floor. I saw him going up the steps."

Q. "What was he doing?"

A. "*He was talking with them and trying to reason with them, to get them to stop.*"

Q. "Did the Captain make any show of force at all?"

A. "*Well, he didn't have any chance to.*"

Q. "That was not my question."

A. "*Well, he did, yes; but he was overpowered.*"

And again:

Q. "When you say he made a show of force, then you mean talking, do you?"

A. "*No, sir; he resisted their efforts to hold him.*"

Q. "*In what way?*"

A. "*By trying to pull away from them.*"

R. p. 366.

Captain Shipp says that he remonstrated with the mob and appealed to them to let Johnson alone and let the law take its course.

R. p. 1120.

It is argued that by going alone into the jail, Capt. Shipp thus voluntarily put himself in the hands of the mob and made it impossible to summon help or organize a posse on the outside to protect the prisoner.

It is true that the sheriff, probably, showed bad judgment in rushing first to the jail without summoning assistance from the outside. It will be remembered, however, that Capt. Shipp was suddenly called up at his home by Attorney-General Whitaker from the editorial rooms of *The Times* and was asked if he knew what was going on at the jail, and told that he had better go down there at once. The sheriff attempted to reach the jail by 'phone immediately, and when he failed to do this, he grabbed his coat and hat and, though he was sick, ran nearly all the way to the jail. While, perhaps, this was not good judgment, and was not the act of a cool man, it was the act of a brave man, rushing without fear of consequences to the scene of danger — to

his post of duty. That those who knew Capt. Shipp best would expect, and did expect, just such rashness on his part, is shown by the record. Immediately after Attorney-General Whitaker had notified Capt. Shipp to go to the jail, and while he and Judge McReynolds were having a conversation with Mr. Frank Spurlock, a prominent member of the Chattanooga bar and a practicing attorney at this bar, he (Spurlock) said:

> "Now, I know Capt. Shipp very well, and he is liable to rush in there and get killed or kill somebody, and we had better go down there and tell him what we know about the situation so he can go in there and be cautious about it."

These gentlemen attempted to intercept Capt. Shipp, but missed him.

R. p. 900.

How can any reasonable man believe that Capt. Shipp rushed into this jail in order to help the mob? Any mob is a reckless and dangerous aggregation of men, especially when the mob has so deadly a purpose as this mob had. The very sight of the sheriff was liable to have caused any reckless or half drunken member of the mob to have shot him as he attempted to enter the jail. There is not the slightest evidence to establish the insistence that Capt. Shipp went to the jail in order to aid the mob. To reach this conclusion, the Court must also find that Judge McReynolds, Attorney-General Whitaker, Mr. L. G. Walker, editor of *The Times*, and Mr. Frank Spurlock were all in the conspiracy, and that it was part of the plan for these gentlemen

to notify Capt. Shipp to go to the jail in order that he might be held by the mob. The whole insistence is absurd and not sustained by the slightest proof or the slightest reason.

Again, it is insisted that Capt. Shipp should have called for help after he was made prisoner by the mob. He was asked by counsel for the Government why he did not do this. His answer was:

> "I didn't think there was anybody there that would have responded to the call if they had been called upon."
>
> Q. "You did not make any effort at all?"
>
> A. "No, sir, I did not. I made no effort except that I remonstrated with the mob."
>
> *R. p.* 1120.

On re-examination, he testified that no one offered to help him; no one offered to give him the slightest assistance; no one suggested to him that they were willing to come to his rescue or to go for relief.

R. p. 1123.

Was the sheriff in a position to call for help while a prisoner in the hands of the mob? If he had asked someone to go for help, does this Court assume for a moment, the mob would have permitted the messenger to leave the jail and go for assistance? Such a suggestion is not entitled to serious consideration. Capt. Shipp did the only thing he could have done — that was to remonstrate with the mob and appeal to them not to murder the prisoner.

It is insisted that there were law-abiding citizens there

who would have given assistance. If there were, why did they not do so?

Section 7002 of Shannon's Code of Tennessee gives a private person the right to arrest another for any public offence committed in his presence, or for a felony not committed in his presence. Besides, the same moral obligation of a citizen rested upon every man present that devolved upon Capt. Shipp, to protect the life of the prisoner and prevent this public attack on the law. Yet not one thing was done by any of these gentlemen present to indicate that they were not in sympathy with the mob. *The only man who ever remonstrated with this mob was the defendant Shipp. The only man who raised his voice to save the life of the prisoner was defendant Shipp.*

Why should Capt. Shipp have attempted the impossible task of sending word to people on the outside that he was held a prisoner and that a mob was about to lynch Johnson? He knew that people on the outside knew it. He had received the telephone message from Attorney-General Whitaker before he started for the jail. He had every reason to suppose that the public were informed of the situation.

Again, it is insisted that Capt. Shipp should have gone to the rescue of the prisoner and should have organized a posse to pursue the mob after they left the jail. It is insisted that the great body of bystanders would have responded to the sheriff's call if he had attempted to rescue the prisoner. Just who did compose this mob and just who were in sympathy with the mob is hard to gather from this proof. Only

a few had immediate charge of Johnson when they attempted to hang him at the bridge, but these few were surrounded by a large crowd. *And from this crowd hundreds of shot were fired at the prisoner, many of the shots striking him and killing him.* Just who fired these shots or how many participated in firing at the prisoner, the evidence does not show, but the testimony of Mr. Chivington and other witnesses for the Government shows that several hundred shots came from the bystanders.

R. pp. 231, 232.

Not one of these bystanders at any time offered the slightest assistance either to the sheriff or to the prisoner; not at any time, did any of them offer the slightest remonstrance or make the slightest appeal to the mob on behalf of either Johnson or the sheriff.

While the people of Chattanooga all felt a great horror for Johnson's crime, and felt certain that he was guilty, and while they felt the deepest sympathy for his unfortunate victim, and none whatever for Johnson — there were yet many people among the law-abiding citizens of Chattanooga who would have gone to the rescue of this prisoner for whom they had no sympathy and for whose crime they felt absolute horror, not because they felt the prisoner should live, but because they believed the law should not be violated; because they believed that no crime excused or could ever excuse mob violence. But this class of citizens are usually at their homes at night. They are not people who stand around as idly curious observers on occasions like this.

Among these bystanders were a great number of men, doubtless, who would, under no circumstances, have assisted the mob, yet, who felt a sort of sympathy with the mob, and who, under no circumstance, would have risked their lives in a combat with the mob. At any rate, they did not show the slightest disposition to object or interfere in any manner with the action of the mob.

Again, we ask the Court to take into consideration Capt. Shipp's physical condition at this time. He was ill, and as he said, was under the treatment of a physician. For a man of his age, he had had a long and exhausting run from his house to the jail. In this sick and exhausted condition, he had undergone a long nervous strain while he was kept prisoner by the mob, and while his condition at the time the mob left the jail may be imagined, it is clearly shown by the testimony of M. J. Horan, who says he got to the jail just as the mob were leaving. He testified:

> "As I walked in the door, I saw Capt. Shipp, and he was very much excited. In fact, he was *almost in a faint.* He was as white as a sheet. I walked up to him, and he just put his hand on my shoulder and said, 'My God, they have ruined me.' I told Sheriff Shipp to sit down, and he started to sit down. Then he jumped up and said, 'My God, I did everything I could.' I said, 'I know that, Sheriff.' I said, 'You are not to blame; you have done everything a man could have done.' I said, 'No one expected this.' He said, 'My God, no.' I told him to sit down again. I asked him if I could get him a drink, and he shook his head and said 'No.' I asked him if he thought he was going to

> faint, with his head hanging over, and I walked out to see if I could get him a drink of water. I did not see any and I came back and resumed my conversation with him. I told him no one in the world knew anything about it. He said, 'My God, I did not.' I told him no one did. I told him I was down in the street right there at the jail before I heard or saw anything."

Again, he stated:

> "Well, he had all the apperance of a man who was ready to collapse. His face was white and he was trembling, just trembling like a leaf, and under those conditions, I naturally thought he was going to faint and suggested that he sit down, and as he sat down, he threw his hand down like this with his head on his hand."

Again, he said:

> "There were tears in his eyes. * * * In fact you could barely understand what he would say. It was just in a tremble. He would tremble and say a little something in a trembling voice, like a voice, the best I could describe it, filled with emotion."
>
> *R. pp.* 1085, 1086, 1087.

In a short while after the mob left the jail, deputies Galloway and Baker arrived at the jail. They had been with a party of friends playing cards at the Eagles club when notified that the mob was at the jail. They ran from the club room to the jail, but arrived after the mob had left. Capt. Shipp told them to go at once to the bridge where the mob had the prisoner. This, they did.

R. pp. 1079, 1066.

Johnson was dead when they arrived.

R. p. 1080.

It is alleged in the information that the prisoner had been heavily guarded until the night of the lynching and that the guards were purposely withdrawn in order to permit the lynching. The record shows that the jail had not been guarded with extra guards after Johnson's conviction, February 9th. And during the time he had remained in the jail after his return from Knoxville, there had been no extra guard at the jail.

R. pp. 1102, 1080, 1081, 1066.

This is undisputed.

In their brief, counsel for the Government seem to bring a wholesale indictment against the whole citizenship of Chattanooga and Hamilton County. The undisputed testimony of dozens of witnesses is swept aside by the simple announcement that it is absurd and ridiculous. The testimony of gray-haired ministers, of veteran physicians, of merchants, manufacturers, and officials, is all treated in the same manner. To all of these, counsel for the Government say:

> "*It is absurd* for the defendants and their witnesses to say that the community was in a state of peaceful repose on March 19th, or preceding days. *It is idle* for them to say that they did not apprehend mob violence to Johnson."
>
> *Brief, p.* 28.

And yet this fact is testified to by numerous witnesses for the Government *and denied by no witness.*

Judge McReynolds and Attorney-General Whitaker are also severely criticised by counsel for the Government. Just why, it is hard to understand. These gentlemen first

sounded the alarm on the night of the lynching. Walking the streets about 9 o'clock and noticing a suspicious gathering at the jail, they went to the office of *The Chattanooga Times* and notified the editor and reporters of what was going on — called the sheriff and requested him to go to the relief of the prisoner — 'phoned to the office of the chief of police — and, in fact, did everything that could have reasonably been expected of any citizen under the circumstances.

Judge McReynolds treated Johnson with every consideration throughout the whole proceeding. He appointed able counsel to defend him, and after his conviction, appointed a committee of other able counsel to confer with his attorneys and render such assistance and advice as the case demanded. When counsel were appointed and before Johnson was tried, Judge McReynolds and the Attorney-General had the sheriff submit to the counsel appointed to defend Johnson all of the evidence the State had against the accused and also give Johnson's counsel the names of the witnesses for the State — a consideration for the defendant seldom, if ever before, shown in the criminal courts of this State.

After Johnson was lynched, Judge McReynolds delivered a strong charge to the grand jury, instructing that body to indict all those engaged in the lynching. Both he and Attorney-General Whitaker did everything possible to procure indictments. That the grand jury failed to indict any of the lynchers is not strange in view of the difficulty that the Government, with all of its agents and detectives,

have had in establishing the identity of those engaged in the lynching. These splendid officials need no defense at our hands. But it is quite a coincidence that counsel for the Government in their brief, criticise most severely those who did the most to avoid the lynching of Johnson.

As before stated, it is possible that Capt. Shipp acted with poor judgment on the night of the lynching. It is easy to see now that he should have had the jail guarded and should have been prepared for a mob. But if he had done so, he would have been wiser and would have shown more foresight than any other citizen of Chattanooga.

It is easy to see now, looking back over events as they occurred on that night, that Capt. Shipp, instead of going to the jail, should have gone to police headquarters or the armory, where the militia were drilling, and organized a posse. It must be remembered, however, that Capt. Shipp did not have time to carefully consider the situation and coolly decide the best course to pursue. He was called up in the night and told by the prosecuting attorney that he should go at once to the jail — the Attorney-General showed just as poor judgment as did Capt. Shipp. The Attorney-General was in conference with several other gentlemen, including the Criminal Judge, and in requesting the sheriff to go at once to the jail, he (the Attorney-General) spoke not only for himself, but for the other gentlemen present, showing that in the excitement of the moment, all of them were guilty of the same error of judgment that Capt. Shipp was.

The testimony heretofore cited shows that Mr. Spurlock, who was with the Judge and Attorney-General, after thinking the matter over, concluded that it would be foolish and, perhaps, dangerous, for the sheriff to rush into the jail alone, and knowing Capt. Shipp's temperament, he knew he would attempt to do this. For this reason, they attempted to intercept the sheriff, but failed to do so.

Certainly Capt. Shipp cannot be convicted for contempt of this Court simply because in the performance of his duties, he exercised bad judgment. He says, himself:

> "If I had perhaps had the thing to go over again, I, perhaps, would know better what to do, and would act differently. But I was acting at that time on the spur of the moment and had gone there for the purpose of seeing what the trouble was and to do what I could to protect the prisoner."
>
> *R.* pp. 1122, 1123.

Capt. Shipp denied, in his testimony, all the charges in the information with reference to a conspiracy with those engaged in the lynching. He denied any intention to aid or abet, in any way, those engaged in the killing of Johnson. He denied that he anticipated or had any reason to anticipate or expect a mob on the night of March 19th. He insisted that he had the very greatest respect for this honorable Court and had done no act, and omitted no duty, from which a contrary conclusion could be drawn.

Capt. Shipp has lived in Chattanooga since 1874. During that time has been engaged in various business enterprises. During the time he has lived in Chattanooga he has

been connected with various public affairs in that city. He was a Confederate soldier, and has, for many years, been a member of the Confederate Veterans' organization, and is quartermaster-general of the entire organization. He was on the staff of the late Gen. John B. Gordon and the late Gen. Stephen D. Lee. He has been a Mason for over forty years and a member of numerous other secret societies. He was also tax assessor for Hamilton County, Tennessee, before elected to the position of sheriff. His splendid character is testified to by every witness whose testimony has been referred to in this brief. Old men and young men, political friends and political adversaries, ministers of all denominations, veterans of the Civil War who wore the blue and who wore the gray, men of all classes and all persuasions who have known Capt. Shipp during his long life in Chattanooga, all, in one voice, say to this Court that he is a truthful, law-abiding, honorable gentleman. Can this Court say that a man with such a character and such a record, would suddenly, without any motive whatever, betray his trust, sacrifice the life of a prisoner in his keeping, become a perjurer and a murderer, in order to show his contempt and disregard for the orders of this, the highest and greatest Court in the world.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1908

THE UNITED STATES OF AMERICA, COMPLAINANT

vs.

JOSEPH F. SHIPP, ET AL

INFORMATION IN CONTEMPT

BRIEF FOR DEFENDANTS NOLAN, JUSTICE, PADGETT AND MAYS

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In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
JOSEPH F. SHIPP ET AL

BRIEF FOR DEFENDANTS NOLAN, JUSTICE PADGETT AND MAYS.

These defendants are charged with being members of the mob that lynched Johnson. They are not interested in the details of the occurrence at the County jail and bridge on the night of the lynching except to deny their presence and participation nor are they interested in the proof showing the history of the Johnson case and the condition of public sentiment with reference thereto. The only question to be considered, so far as these defendants are concerned, is their participation in the lynching.

Each one of the defendants filed an answer to the information denying his respective participation in the lynching and showing where he was on this particular night.

While the defense of each is separate and distinct and will be hereinafter treated separately there are some questions

that may properly be considered as applying to all alike and will be treated in one discussion.

The Johnson case has been a famous case in and around Chattanooga Tennessee from the time the crime was committed, until the present time. From the whole record it will be seen and can properly be inferred that the facts connected with the case have been prominently in the minds of the Chattanooga people at all times. Every step in the case was watched with intense interest by almost every citizen and the subject was, evidently, constantly under discussion during the time from the arrest of Johnson to the night of the lynching. So in times of such great interest it is comparatively an easy matter for a man to remember his actions and whereabouts on that eventful night in the City of Chattanooga. At any ordinary time, or upon any ordinary night where there is nothing to particularly impress one's mind at that time or later, it is usually a difficult matter, after a lapse of a few weeks, to fully remember the occurrences of such a time or with certainty to identify such time with particular occurrences. But it is different at times of extraordinary events, whether such events are known at the time or ascertained later. A report on the following morning of some extraordinary occurrence of interest to every one in a community would have the result of recalling vividly to one's mind where he was and what he had been doing at such time. It is therefore entirely reasonable that these defendants could give an account of their actions on the night of March 19th, 1906, when Johnson was lynched. And it is also entirely reasonable that their several actions could be identified with this particular night.

Nolan in his answer to the information denied his presence and participation in the lynching of Johnson, and showed where he was on that night during the time of the lynching. His claim is that he was at his place of business over a mile from the County jail up to about 9.30 P. M., that he then went to the saloon of his brother and remained there until a little after 10 P. M. at which time the saloon was closed for the night, that he then went to his home near by and there remained until the following morning.

Nolan testified to the above facts, denying any knowledge of or connection with the mob (964-967).

John Nolan, a brother of the defendant testified that he conducted a saloon about a block from defendant's place of business, that on this night defendant was at witness' saloon from about 9.30 P. M. to about 10.15 P. M. (936) he left his saloon with defendant shortly after closing time, 10 P. M. and from the saloon went to defendant's house (943).

There was a matter of business pending between witness and defendant and discussed at that time (943).

J. C. Williamson testified that he was in the saloon of John Nolan on that night and saw and talked with the defendant from about 9.40 P. M. to 10 P. M, at which time witness left the saloon on account of closing time (948).

The Nolan brothers were discussing a business proposition (948).

These witnesses base their estimate of time on the saloon closing time, which was 10 P. M. by ordinance of the City of

Chattanooga, this enabled them to fix the time with certainty.

Alfred Smith a colored porter for defendant testified that defendant was at his saloon on that night from 6 P. M. to 9.30 P. M. (955-6). All these witnesses show that they remembered this night as the time Johnson was lynched; and are certain and positive. Smith says, "I heard they lynched him that night, and that made me remember it was that night, the next morning, I didn't know it until that next morning," (955).

Williamson says: "No sir, no more than just being that the thing was not done every day, you know, it made me recall where I was, and all about it. I saw it in the paper, and it was talked at the shop where I worked."(951).

From the nature of this testimony there is no middle ground. It is either true or false. There is no chance of a mistake in fact. The witnesses testify in an intelligent manner and stand before the Court as credible.

Complainant rests its case on the testimony of Ware, Franklin and Gibson. The statement of Ware's testimony in complainant's brief is not accurate nor fair to the defendant.

Ware testified,

Q. Did you recognize the man?

A. No, I cannot say that I did.

Q. Did you think you recognized him at that time?

A. Well I thought I knew but I would not be sure

Q. Who was that?

A. Do you want facts or just my ideas about it?

Q. You know whether you recognized him or not of course.

A. I say I thought I did, but I will not say I did. I would not make affidavit that I knew him.

Q. How long have you known the man you thought you recognized?

A. I have known him quite a while.

Q. How well have you known him?

A. Not so very well—not enough to recognize him and know him in the dark.

* * * * *

A. I thought I recognized one of the parties as Nick Nolan. (416-7)

* * * * *

Q. Mr. Ware I understand you to say that you were not at all certain you recognized Mr. Nolan there?

A. I am not.

Q. Your acquaintance with Mr. Nolan was so slight that you were not able to recognize him there on the bridge in the dark that night?

A. That is right. (424).

The man thought to be Nolan by Ware is the same man that struck the reporter, Pritchard (426).

The above quotation from Ware's testimony shows that he was very uncertain as to the identity of Nolan. He refuses to testify as a fact that he saw and recognized Nolan on that night and consequently his testimony is of little weight, and of slight probative effect. In fact his testimony even if uncontradicted would not establish Nolan's presence. The man Ware thought was Nolan was another man.

Chivington, a reporter, who was first introduced by the complainant, was within two or three feet of Pritchard when he was struck (910).

Chivington was well acquainted with Nolan (910). He saw the man that hit Pritchard and that man was not Nick Nolan (910). He saw the man's face and knows that it was not Nolan (910, 917).

Pemberton, Deputy Circuit Court Clerk, saw the man that hit Pritchard. He says that he did not see the man's face but from his size and general appearance he don't think he was Nolan. He described the man as a much larger man than Nolan (920).

So we have Ware's uncertain identification offset by a positive statement of one witness that Ware is mistaken and by a statement of another witness more positive and certain than Ware.

Gibson, the night jailer testified that he thought one of the masked men was Nick Nolan.

> A. Well I thought I knowed Nick Nolan. The man that I thought was Nolan had a mask over his face.
>
> Q. That was Nick Nolan, that you thougth was Nolan, the defendant in this case I mean.
>
> A. I don't know whether it was him or his brother, it looked very much like him. (2028).
>
> * * * * *
>
> Q. How did you recognize him.
>
> A. It was more by the size of the man.
>
> Q. And what else.

A. And his face was not visible to me. More by the size of the man I took it to be him. (2025).

Some man was called "Nick" in the crowd and this helped witness to think he recognized Nolan. (2025).

Q. State whether or not if it had not been for some one in that party used the name "Nick" you would have supposed it was Nick Nolan.

A. That was the name that made me incline to think so.

* * * * *

A. I just heard somebody say "Nick". (2052).

On cross examination witness stated that he did not "mean to say positively that I recognized him." On being asked if witness identified defendant as the man he recognized at the jail, witness stated "The man that I thought was Nolan was a smaller man, apparently. If he could stand up I could tell more about it".

"(The defendant Nick Nolan stood up as requested.)"

"Witness, He was a lower man it seemed to me."

* * * * *

A. Well the man I recognized and according to my judgment I thought was Nolan, was a smaller man than this one. (2050-2051).

* * * * *

A. No I don't recognize him as the man. (2052).

Gibson was a witness before the Hamilton County Grand Jury shortly after the lynching and testified that he did not recognize any member of the mob (2054)

2057

Witness thought that one of the Nolans was in the mob. (2055-2057).

> A. "There was a small man there and I just got it in my head some way that it was Nolan and I had heard "Nick" called in the crowd". (2058).

The testimony of this witness is uncertain as to Nolan. It could not be otherwise in view of the fact that the man was masked. His recognition so far as it went was by size and appearance and when defendant stood before the witness at the hearing he refused to say he was the man and stated further that the man he recognized was a smaller man than defendant. About all Gibson's testimony amounts to is that he thought one of the Nolan boys was in the crowd. This cetainly cannot be sufficient evidence to condemn the defendant even though there was no contradictory testimony.

Then again Ware and Gibson don't agree as to which man was Nolan. Gibson says his Nolan had a mask, while Ware's Nolan was without a mask. Gibson's Nolan was a small man while Ware's Nolan was larger.

Joe Franklin, colored testified that he saw Nick Nolan at the jail on the night of the lynching.

Through all the testimony there is carried a distinction between the mob and the spectators, the "first crowd" was the mob and the "second" or "back crowd" was made up of spectators. Franklin says that the man he recognized as Nolan was in the back crowd and not with the mob. (650). The witness is involved in contradiction on nearly every part of his testimony and this to such extent by credible witnesses that his testimony can have but little, if any weight. It would seem

that Franklin's Nolan was a different man from either Ware's or Gibson's for the other Nolans were actively engaged in the mob while Franklin's Nolan was a peaceable onlooker.

Franklin says he was in the Northwest gate of the Court House yard (529), when the mob passed up Walnut Street. (530). Pemberton says he came out by this gate and Franklin was not there (919), there was no one on the steps or in the gate (919). The gate is about 6 or 7 feet wide (931). It would have been impossible for a man to pass out of this gate without seeing another man sitting in the gate way.

H. P. Fry, a lawyer, testified that Franklin told him on the day after the lynching that he, Franklin, was not at the jail that night, "that he started towards the jail, and concluded it was not a safe place for a nigger, and left". (746). This conversation occured on the afternoon of the day following the lynching when the subject was fresh and under general discussion. (746).

Without pointing out in detail, the entire testimony of the witness exhibits a great amount of prejudice against the defendants. His willingness to testify against the defendants, his reluctance on the other side, and his general demeanor on cross examination shows that he regarded the issue as one between the whites and the blacks and he was decidedly in favor of the blacks,

Franklin's record is not at all good. He has been indicted several times in the Courts of Hamilton County Tennessee. (537, 546, 548) and in one case admitted guilt of defrauding the County by collecting illegal fees. (542).

The testimony of this witness stands by itself. There is no corroboration by Gibson and Ware for the reasons that evidently each is attempting to identify a different man. So we have Franklin standing alone with strong contradictions in almost every particular. His statements as to what happened at the jail are denied by the sheriff and the deputies, his statement that he was in the Court house yard gate is flatly denied by Pemberton and he has himself stated that he was not at or about the jail on that night. With this unfavorable condition is Franklin's testimony to be taken as conclusive of Nolan's presence in the face of the positive evidence of Nolan's witnesses detailing his whereabouts on that night?

Under a fair construction of all the evidence the Government has failed to show Nolan's participation in the mob. His alibi is well supported by competent proof and his defense is sustained by the great weight of the evidence.

BART JUSTICE

This defendant answering said that he was not at the County jail on the night of the lynching, and had no connection with or knowledge of the mob or lynching of Johnson. On that night he was at his home in St. Elmo several miles from the jail, and a part of the time visiting at a neighbor's house. Justice testified to the foregoing facts (751-756).

James F. James testified that on the night of the lynching defendant was at his house from about 7 P. M. to after 10 P. M. Witness' wife was sick and defendant's wife and daughter came over to call on her (720-721). Witness remembers this night on account of his wife's illness (721) and by

being with defendant on the following morning when he first heard of the lynching (722).

Fred Fryar, next door neighbor to James testified that defendant was at the house of James that night. He heard defendant talking on the porch and heard him say "Good night," something after nine o'clock (727, 731). Witness was with defendant on the following morning when they heard of the lynching (727).

Mrs. Adelia Justice, wife of defendant, was with defendant on this night at James' house from 7 to 10 o'clock P. M. (735). Miss Emma Justice, daughter of defendant, was with her father and mother that night (736).

The witnesses James and Fryar have no interest in this matter, they testify intelligently and give sufficient reasons why they recall this particular night. The testimony is positive and direct and does not admit of a mistake in fact.

In the brief Counsel for the Government first say that it must be remembered that this defendant was a member of the first mob that tried to lynch Johnson.

Defendant was asked about this. He stated that he was present as a spectator in company with such men as Judge McReynolds, Attorney General Whitaker and H. Clay Evans. He was requested to act on a committee to examine the jail. Later defendant made a speech advising the crowd to disperse (759-763). Defendant is six feet one inch high and weighs from 215 to 236 pounds (736).

The man identified as Justice was evidently the leader of the mob.

The Government's case is made by the testimony of two negroes. William Tarpley, a prisoner at the jail and Joe Franklin.

Tarpley was confined on the second floor of the jail. The mob came into the jail on the floor above him and went up another floor to where Johnson was confined (348).

Tarpley says he could see Justice through an inch crack (346). Justice did not have a mask (347).

It was impossible for a man located as Tarpley was to see a member of the mob on the upper floors (374).

The map of the jail shows that Tarpley has testified falsely (2196). Physical facts are the strongest contradiction of a witness known to the law. Tarpley could not have seen Justice without looking through solid walls of steel and brick.

Joe Franklin testified positively that he saw Justice as the leader of the mob (517, 519). He says "if Justice wasn't there, there aint no Christ in heaven." Such statements as this necessarily weaken the testimony. It shows an extravagant imagination and an intense interest in the out come of the case.

Justice wore a mask according to Franklin (521).

The description of the leader of the mob does not correspond with Justice (327). Witness Curtis says that the man was smaller than defendant when the defendant stood before him at the hearing (372). Ware says that Justice was not in the mob (707). He is very positive that Justice was not in the crowd that brought Johnson out of the jail. He says,

> A. I would have recognized him above any one that was there (707).

A. No Sir, he could not have been there without my seeing Bart Justice (709.)

The positive statements of this witness are based on his close acquaintance with Justice and the unusual size and general appearance of the man.

Witness saw the leader of the mob and knows he was not Justice (710).

Pritchard says there was a man who resembled Justice in size and general appearance but he was not Justice. He met this man at a later date and had a talk with him (1285).

Pemberton says Franklin was not as claimed by him at the northwest gate of the Court house yard when the mob passed up Walnut Street (919).

Fry says Franklin told him that he only started to the jail and didn't go to the jail (746).

The testimony of Tarpley cannot be of any weight. Clearly he was drawing on his imagination.

So the case must rest alone on Franklin's testimony.

This testimony is contradicted by Ware in the most positive terms. Ware could not have been mistaken in what he said. He doesn't leave the government any ground for saying that Justice might have been there and witness not have seen him, for the very man identified by Franklin was not Justice, nor was Justice in that crowd. Curtis saw the leader and stated that he was a smaller man than Justice.

Franklin's testimony was more fully discussed in the brief for Nolan above and the statements there made apply with equal force.

Without considering the alibi testimony the weight of the evidence is against the Government.

Supported by only one witness of doubtful character in the face of respectable proof to the contrary the Government's case must fail.

The alibi of defendant is fully and completely made out, and is not assailed by the Government. The Court is asked to believe one witness, who throughout his testimony shows great bias, and to disbelieve six or more witnesses who testify intelligently and without any signs of bias or prejudice.

There is no reason suggested for setting aside the oaths of these parties. The Court is, in justice, bound to follow the weight of the evidence.

HENRY PADGETT AND WILLIAM MAYS

These defendants answered denying their participation in the lynching. Padgett shows that he was at the Stag Hotel during the evening of the day of the lynching.

Mays shows that he was at his home after about 6 o'clock P. M. Neither knew anything of the lynching until the next morning.

Padgett testified that he was at the Stag Hotel from about 6 o'clock P. M. until after 10 o'clock P. M. (1040, 1041).

Albert C. Chambers testified that he was at the Stag Hotel with Padgett from 6 to 10 P. M. (979). Witness had been that night to put his mother-in-law on the train and stopped in at the pool room (986). He remained until the saloon closed at 10 P. M.

David H. McJunkins states that he was with Padgett at the Stag Hotel on this night. He first saw Padgett about half past eight and left with him after 10 o'clock (996). This witness can easily recall his actions of that night for the reason that he was required to prove an alibi on the following morning by his mother (995).

W. B. Gray states that he saw Padgett at the Stag Hotel from 8 to after 10 P. M. (1005). He remembers the particular night because he and McJunkins had talked of the events of this night on the next morning, (1005) and recalled where they were. (1017).

Thomas F. Duckworth states that he was with Padgett at the Stag Hotel from about 9 to 10 P. M. on this night. Witness had been to a lodge meeting and came by the hotel afterwards (1018-9). Witness left the hotel with Padgett and walked to a street car line where Padgett boarded a car. (1019).

These witnesses have each testified in a straight forward intelligent manner. There is nothing so remarkable in their testimony as to justify the statement in Counsel's brief that they are unworthy of belief. True they are friends and associates of the defendant, but where could he get proof of his whereabouts except from his associates? Each one gives a reasonable account of his actions that night and a proper reason for remembering the details. It is not quite fair to charge that witnesses are unworthy of belief because, perchance, they have testified in favor of the opposite side in a law suit. There should be some respectable evidence on which to base such charge before it is justified.

The witnesses are positive and certain and their testimony leaves no ground for mistake.

William Mays claims that he was at his home on this night after about 5:30 o'clock. In going up his steps he fell and skinned his nose (872). Defendant's daughter was at home that night, but was unable to testify on account of illness (874, 975).

Defendant's wife testified that he was at home after 7 o'clock on this night. He had a skinned place on his nose when he came home (902). While there is not so much testimony to establish Mays' whereabouts on that night it is equally as strong for the reason that if an alibi was to be fabricated it would certainly be supported by more witnesses. There is necessarily only a few witnesses that can testify to a man being at his home on any night. The members of his family or perchance some neighbor or friend who has called. The Government's theory is that Padgett and Mays were together. If both alibis are false why didn't Mays take advantage of Padgett's testimony and thus have a stronger case made out? Why would he say he was at home when he could make a stronger case by saying he was at some other point? If Padgett's witnesses have testified falsely they wouldn't have objected to including Mays. It would seem that the apparent weakness of Mays' alibi is a tower of strength to both of these defendants.

The Government relies on the testimony of one John Stonecipher to convict these defendants. There is no proof that these defendants were seen at the jail that night. The case is based on certain statements and admission made by

them to Stonecipher. Stonecipher says there was a conversation before the lynching in which Padgett and Mays were expressing dissatisfaction with the course of the Johnson case. There is nothing in this conversation to show that these parties were intending or making preparations to lynch Johnson.

On the next day Stonecipher claims that he heard a conversation between Padgett and one Alf. Handman, in which Padgett was charging the newspaper with printing a lie. Witness says: "I said how do you know it was a lie Henry?"

Q. What did he answer?

A. Well, he told me he was there.

A. And Henry says we did the nigger up alright didn't we. Alf. says, You bet we did. (268).

With reference to Mays, witness says:

A. "Yes Sir, he had the left side of his nose skinned up pretty bad and I says, Hello Bill, what is the matter with your nose? He says, I skinned it last night breaking that damn jail door down in getting the nigger out". (268).

Thomas A. Dobbs is quoted in the brief as sustaining Stonecipher. He sustains him only on the question that there was a conversation on that morning relative to the Johnson lynching.

On the vital point as to whether Padgett said he was in the mob he does not sustain Stonecipher.

Witness says: "I heard a general conversation in front of Ransom's saloon".

Q. "State what was said in that conversation.

A. I don't know as I paid much attention to it. I didn't hear all of it. I wasn't paying much attention.

I heard Henry Padgett say they fixed that damn nigger last night. That is about the only thing I heard in regard to that".

A. "As well as I understood, I think he said they fixed the nigger last night. That is the way I understood him". (494).

Padgett denies the conversation before the lynching (1038). He states that he don't remember of talking with Stonecipher on the morning after the lynching, but is positive that he never used the expression "We did the nigger up last night". He states further that he was at the Stag saloon on that morning and saw Dobbs and Stonecipher.

Mays denies both conversations detailed by Stonecipher. (874). He was not with Padgett, Dobb and Stonecipher on the morning after the lynching. Dobbs says that Mays was not present (494). Stonecipher spoke to Mays on the street. He does not claim that Mays was present at the Padgett conversation (268). Mays says he passed Stonecipher on that day in front of one of the saloons, either Ransom's or the Stag (893), but don't remember that he had any talk with him. (896).

The foregoing completely covers the evidence against these defendants.

The witness Stonecipher stands alone and unsupported in his statements, and is contradicted by both defendants and by the witness, Dobbs. It is altogether probable that some thing was said about the lynching when Padgett, Dobbs and Stonecipher met. It would have been natural for that subject to be under discussion on that morning wherever men stopped to talk.

Padgett don't remember what was said except that he didn't state that he was a member of the mob. Don't it strike this Honorable Court as a remarkable proposition that a man would openly in a public place to a mere acquaintance state that on the night before he had committed murder? Every man in a law abiding community knows that murder is unlawful and is punishable by death or imprisonment. Is it reasonable that these men would lay themselves liable to such penalties by such indiscriminate talking? It would seem that a man who has committed murder would in every way attempt to conceal the crime and thereby avoid the punishment. So Stonecipher's story is highly unreasonable and for that reason should be given less weight than evidence of a reasonable nature. The testimony of Dobbs, as to what occurred, comes within the rules of reason. It is certainly more to be believed than Stonecipher's statements in view of its nature and the further fact that Stonecipher was shown to be utterly unworthy of belief.

Then again the nature of the conversation is such that a Court cannot afford to call it evidence. At the most it was thoughtless, idle talk or as sometimes expressed as barroom gossip. Can such talk be considered as sufficient proof of murder?

Then again if all that Stonecipher says is true and it should be considered as a confession, there is not a case made out for the reason that defendants have shown by an abundance of competent proof that they did not participate in the mob. Under the rule of first trying to make all the witnesses speak the truth the innocence of defendants is consistent with the testimony of every witness.

Stonecipher is unworthy of belief.

A. W. Boyd (616).

A. N. Sloan (658).

W. B. Cox (669).

Ewing White (1029).
M. T. Pitner (1033).
John R. Pitner (1116).
H. D. Rider (1124).
T. J. Moody (1132).
T. J. Sholl (1142).

Some of these witnesses have known Stonecipher since he was a boy and know his reputation both in Chattanooga and in his former Georgia home. They unhesitatingly say that his reputation is bad and that he is not entitled to credit on his oath.

It is not at all clear why this man Stonecipher should have shown so much interest in this case, but it does appear that he thought the killing of his nephew was in some way connected with the mob. (280). At any rate he had interested himself and was working on the case. (281).

Giving Stonecipher's testimony the most favorable light it does not in any degree prove participation, nor overcome the alibis set up and relied on by these defendants.

These cases are in effect criminal cases and in weighing the evidence the rules in criminal cases should prevail.

Whether the reasonable doubt rule should prevail or not the Court should require strong and convincing proof before convicting these defendants and inflicting punishment. The evidence should be stronger than a mere preponderance as in civil cases. There is something more important than property rights and consequently more strictness reqired. The freedom and liberty of a citizen should not be taken except on the strongest and most convincing proof.

We submit that the evidence in all these cases falls far short of the necessary convincing force and the defendants are entitled to be discharged.

Respectfully submitted.

LEWIS SHEPHERD,
MARTIN A. FLEMING,
T. POPE SHEPHERD,
Attorneys for Defendants.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant, vs. JOSEPH F. SHIPP, ET AL. } No. 5, Original.

BRIEF FOR JEREMIAH GIBSON.

May It Please the Court:

On behalf of this defendant, we refer to and adopt the brief and argument filed on behalf of Captain Joseph F. Shipp, the sheriff.

The defendant, Jeremiah Gibson, was the night jailor, and arrived at the jail about 6:15 or 6:30 o'clock on the night of the lynching. It is insisted he is guilty of aiding and abetting the lynchers, because he did not summons assistance and prepare to offer resistance to the members of the mob before they arrived. Counsel for the Government, in their brief, say:

> "His neglect in this respect is sufficient to sustain the charge that he aided and abetted the mob."

The proof in this cause set out and referred to in the brief filed on behalf of Captain Shipp shows beyond question

that no mob was expected on the night of March 19th, 1906, and that nothing had occurred to cause any reasonably prudent person to apprehend that the jail would be attacked. It is insisted, however, that the testimony of Mrs. Ellen Baker shows that the defendant Gibson knew the mob was coming. She testifies that she was a prisoner in the jail, and some time in the afternoon before sundown (on the day of the lynching) she went down into the office of the jail to get some one to write a letter for her, and the jailor said to her:

> "You hurry on and go on up back to your room. There is a mob coming in here."
>
> (*R. p.* 243-244.)

This statement, she said, was made by Mr. Gibson, the night jailor. This woman admits she was in jail for illicit traffic in whiskey, and her cross-examination shows that she was an old offender, along this line. (*R. p.* 245-251.)

It is shown by the testimony of W. T. Center (*R. pp.* 1127-1129), and J. H. Stuart (*R. pp.* 1129-1133), that this witness, Mrs. Baker, was a woman of notoriously bad character — a prostitute as well as an illicit dealer in liquor. She admits on cross-examination that she was frightened and very much excited on the night of the lynching.

The defendant denies the statements of this witness. He says that when he arrived at the jail the woman was locked up in her cell, and she did not come downstairs at all that night. The only thing upon which this woman could have based her statement was a remark made by the defendant

Gibson when the mob arrived. When he heard them battering on the door below and demanding the negro, he, the defendant, (standing near the cell of the Baker woman) said: "I believe that is a mob."

(*R. pp.* 1128-1129.)

Houston Gibson, the 14-year-old son of Jeremiah Gibson, went with his father to the jail on the night of the lynching, and also testified that when they arrived the Baker woman had already been locked up in her cell. (*R. p.* 1007.)

The statement of the defendant as to what occurred on the night of the lynching is told in an honest, candid manner, and we submit that his statement is entitled to be believed.

The mob came to the jail and surprised him between 8:30 and 9 o'clock — battered down the door leading to upstairs where the defendant was at the time the mob arrived, and forced him to surrender the keys. Many members of the mob were armed, and they handled him roughly. He shows that he had no avenue of escape after the mob arrived, and no chance to communicate with the outside world. He was an old man 62 years old, and a veteran of the Civil War. (*R. pp.* 1019-1049.)

The defendant is criticised because he did not attempt to follow the mob, or arouse a posse to start in pursuit. Attorney-General Whitaker testified that immediately after the mob started away from the jail with the prisoner, he went to the jail and saw defendant Gibson and Captain Shipp, the sheriff. He said that both Captain Shipp and the de-

fendant Gibson had guns — "and Mr. Gibson was so excited the perspiration was rolling off of him in great beads." He also said that he informed these officers of the fact that he had attempted to arouse the police department and had failed. (*R. p.* 852.) The Attorney-General says that both Captain Shipp and the defendant Gibson were excited, and that he was excited himself.

The testimony of Houston Gibson, the little boy of the defendant Gibson, corroborates the statement of the defendant that on the night in question defendant had taken this little boy to the jail with him, and he remained with him until 8:30 when he let him go to the theatre.

There is not a word of proof in this record that shows that this old man was guilty of aiding or abetting the mob, or conspiring with the members of the mob in the lynching of Johnson. On the contrary, the very fact that he had his little son with him at the jail that night proves that he did not expect a party of armed outlaws to come and break in the jail and murder one of the prisoners.

Again, this witness, in a measure, identified one of the lynchers — Nick Nolan — and his testimony is relied upon by counsel for the Government as proof of said Nolan's guilt. Can the Court conceive that this man, if he were a conspirator with Nolan and others, would dare, or desire, to betray one of his associates? Why should he have testified against Nolan? Chivington, Curtis, and other witnesses for the Government, confessedly honest men, had the same opportunity to recognize Nolan that the defendant did, and

yet they did not do so. Surely a desire to speak the truth could be defendant's only motive in his testimony with reference to Nolan. Surely, if he nad been in sympathy with and aiding Nolan, he would not have given testimony against him.

Numerous witnesses testify to the defendant's good character.

Judge Clark says that he had known defendant since 1883, more than twenty-five years; that he was a man of good character. (*R. p.* 998.)

Respectfully submitted,

WILLIAM D. SPEARS,

ROBERT B. COOKE,

JAMES J. LYNCH,

Counsel for Defendant Jeremiah Gibson.

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No. 3. ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1908

THE UNITED STATES OF AMERICA

vs.

J. F. SHIPP ET AL

G. W. CHAMLEE,
J. A. HOOD,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys.

In the Supreme Court of the United States

OCTOBER TERM, 1908

UNITED STATES OF AMERICA, *Complainant*
vs.
J. F. SHIPP ET AL., *Defendants*

No. 5. Original

REPLY BRIEF FOR THE DEFENDANT, FRANK WARD.

The Court is well aware of the original proceeding to punish for contempt for an alleged disobedience of its own orders in this cause. For the purposes of the present hearing the facts and pleadings may be stated briefly and informally.

The information sets forth the conviction at Chattanooga, Tennessee, in the State Court, on February 11, 1906, of the negro Ed Johnson; the imposition of the death sentence; his subsequent petition for habeas corpus, which was heard by District Judge Clark and dismissed, and his application for an appeal to the Supreme Court of the United States; the granting of said appeal and the order to stay all proceedings in the State Courts. And after the granting of his said appeal, that he was taken from the jail in Chattanooga to the bridge over the Tennessee River and there killed.

A rule to show cause was issued upon the information of the Attorney-General. The defendant answered said rule and plead

"Not Guilty" and set out specifically that he was not present at the time of said lynching, no party to said killing and in general and specific terms plead "Not Guilty" to the charge.

Under proper orders of this Honorable Court the testimony has been heard, and we will now address ourselves to the testimony in the case as applied to the defendant Frank Ward. For the Government the proof against Ward is found on page 312 of the printed record containing the evidence in the testimony of one J. N. Stonecipher. Mr. Stonecipher says that he saw Mr. Ward on the evening before the lynching, and after stating that he saw him and telling the place where, in the City of Chattanooga, the following extract from his testimony contains all of the incriminating evidence presented by the Government against Ward:

"Q. When did you see Ward?

A. I saw him about five o'clock or a little after.

Q. Where did you see Ward?

A. I saw him in front of Mullery's Saloon on Market Street.

Q. Mullery's saloon?

A. Yes, sir.

Q. On what street is that?

A. Market Street.

Q. At about five o'clock?

A. At about five o'clock.

Q. What was said; did you have any conversation with him?

A. I stopped on the curb waiting for a car to go home and Ward called to me. He says, "Ain't you from Georgia?" I says, "I used to live there."

Q. What was that?

A. I stopped on the curb and Ward came out of the saloon. He hollered at me and called me by name. He said, "Ain't you from Georgia?" I says, "Yes, I used to live in Georgia—mighty near raised there." He says, "We want you to help us lynch that damned negro to-night."

Q. What was that?

A. He says, "We want you to help us to lynch that damned negro to-night."

Q. What did you say?

A. I says, "I don't believe it would pay. I believe Sheriff Shipp would shoot the red hot stuff out of you."

Q. What did he say?

A. He says, "No, it is all agreed. There won't be a sheriff nor a deputy sheriff there." I said, "Ward, I believe you are lieing." That is just what I told him.

Q. Did you have any further conversation with him that night?

A. No, sir."

On page 314 of the transcript the following extract is taken from the testimony of the same witness, Stonecipher, in which he claims to give an alleged conversation with the defendant, Ward, that occurred the day after the lynching:

"Q. What conversation did you have with Mr. Ward?

A. He came out of Jack Price's saloon and was standing in the vestibule, and he says, "You are the first damned man from Georgia ever I saw that didn't have nerve enough to kill a negro." I told him I did not have much nerve when I had to buck up against the Government.

Q. Did any of those men ever tell you the names of any of the persons who were in that mob?

A. Yes, sir, Ward told me several names in the mob.

Q. When did he tell you that?

A. It was along about the 10th of June.

Q. Of what year?

A. Last year."

On page 319 Stonecipher says other persons were present who heard Ward make the statements just quoted.

"Q. Who was present at Jack Price's saloon at the time you say you had that conversation with him there?

A. There were two or three present.

Q. Who were they?

A. My brother was one of them.

Q. What is his name?

A. H. M. Stonecipher.

Q. Where does he live?

A. He lives at Ridgedale.

Q. Who else was there?

A. I think Dave Bowles was there.

Q. Who is he?

A. He is a carpenter here in Chattanooga."

The Government proved by Mrs. J. H. Springfield and Claude Springfield in substance that Stonecipher and Ward boarded at her house for several months in the year 1903 and occupied adjoining rooms. That was about five years before this hearing was had. The object of that testimony was to try to show that Stonecipher was acquainted with Ward That in substance is all that there is in the record against this defendant, Frank Ward. In answer to that charge Mr. Ward took the stand as a witness in his own behalf and denied the charges against him contained in the information and in the contempt proceedings. On pages 690 et seq. will be found Mr. Ward's testimony, and we take from it material extracts.

"Q. Did you have any knowledge or intimation that there was going to be a lynching that night?

A. No, sir.

Q. Had you any agreement with anyone to help lynch Johnson that night?

A. No, sir.

Q. Or at any other time?

A. No, sir.

Q. I will ask you to state whether or not it came as a great surprise to you when you saw it in the morning paper?

A. Yes, sir.

Q. I will ask you to state whether or not you were about the County Jail that night?

A. No, sir.

Q. Or the County bridge?

A. No, sir; I was not about the bridge or the jail either, because that was the last place I would want to go.

Q. You did not conspire, confederate or agree with anybody to enter into the lynching at all?

A. No, sir.

Q. Had you heard it talked about beforehand?

A. No, sir.

Q. I will ask you to state whether or not you called J. N. Stonecipher out of Mullery's saloon or saw him in front of Mullery's saloon and asked him if he was from Georgia about five o'clock?

A. No, sir.

Q. On the evening or afternoon before the lynching?

A. No, sir.

Q. Did you at any other time?

A. No, sir.

Q. I will ask you to state if he said anything to you about his ever living in Georgia or being raised there?

A. No, sir, I would not know the man if I would see him.

Q. I will ask you to state whether or not you asked him to help lynch the "damned negro" that night?

A. No, sir; I am sure I would not ask a man I did not know anything such as that.

Q. Did you use any language to that effect?

A. No, sir.

Q. I will ask you to state whether or not you saw him in front of Jack Price's about five o'clock on the day following the lynching?

A. No, sir.

Q. I will ask you to state if you told him on the afternoon before the lynching in front of Mullery's saloon that it was all agreed that

there would not be any sheriffs and deputies at the jail that night?

A. No, sir, I don't know nothing about that at all.

Q. You say you had no conversation with him the day following the lynching in front of Jack Price's saloon?

A. No, sir.

Q. I will ask you to state whether or not you stated to J. N. Stonecipher in front of Jack Price's saloon about five o'clock on the day following the lynching, "You are the first damned man from Georgia I ever saw that did not have nerve enough to kill a negro?"

A. No, sir, I never said no such thing.

Q. Did you say anything like that to him?

A. No, sir, I did not.

Q. I will ask you to state whether you said that or anything like it to anybody else in his presence or hearing?

A. No, sir, I did not. I had no right to say no such thing.

Q. I will ask you to state whether you used any such language as I have asked about there or anywhere else?

A. No, sir.

Q. I will ask you to state whether or not you knew anything about the United States Supreme Court having taken jurisdiction of the Ed Johnson case at all?

A. No, sir.

Q. Before the lynching?

A. No, sir.

Q. When was the first time you knew they had taken any action in the case at all?

A. After he was lynched."

In the cross examination of Mr. Ward he said in answer to the Attorney-General:

"Q. Who was it told you after this lynching that the Supreme Court had made an order in the Ed Johnson case?

A. I seen it in the paper.

Q. What paper?

A. The Times.

Q. What day?

A. I think it might have been the 20th, I reckon.

Q. You mean the next morning you saw it in the Times?

A. Something like that. It might have been a day or two afterwards, but I know it was talked about that he was a United States prisoner.

Q. You did not know anything about it until you saw it in the Times the next morning or a day or two afterwards?

A. No, sir.

Q. You knew that Ed Johnson had been arrested and tried, did you not?

A. Yes, sir.

Q. But you did not know the Supreme Court had taken any hand in it or made any order with reference to the matter until after he was lynched?

A. No, sir.

Q. What was your business?

A. I am a bricklayer.

Q. Where were you working at that time?

A. I was working out at the United Pipe Works."

The witnesses in defense of Mr. Ward show that he was intoxicated on the night of this lynching and that he was physically unable to have participated in the lynching if he had been disposed to do so at the hour the lynching occurred.

"Q. I will ask you this question, Mr. Ward. Do you remember on the night of this lynching just prior to the time you retired waking up and finding yourself in the hallway of where you lived?

A. I waked up about 11 o'clock or a quarter past eleven or some time, I don't know what time it was, of course, but I was on the steps. The door was fastened, and I have a night lock on the door. I woke up and looked around and I seen I was at home and I went

up stairs and went to bed."

Mr. W. P. Barnes, a witness for the defendant, testified as follows:

"Q. What is your business?

A. I am in the saloon business.

Q. Do you know Frank Ward, one of the defendants in this case?

A. Yes, sir.

Q. How long have you known him?

A. About three years.

Q. Do you remember the time of the lynching of Ed Johnson?

A. Yes, sir.

Q. Where did Mr. Ward live at that time?

A. He lived up stairs at 1057½ Market street over my place of business.

Q. Where were you on the night of the lynching of Ed Johnson?

A. I was at my place of business.

Q. What hours were you there?

A. I was there from seven up until eleven.

Q. Did you see Frank Ward on that night?

A. Yes, sir.

Q. Where and at what time did you see him?

A. Why, he was in and out there several times during the night.

Q. How much of the time from 7 until 11 was he in and out of your saloon?

A. I suppose he was in and out about a half dozen times.

Q. Do you remember any incident that fixes it in your mind that he was there that night?

A. Yes, sir, he was drinking. He was on a drunk—a spree. He was in and out around my place. When I got ready to go—I locked up at 10 o'clock—I had some other business to fix up and I left there at 10 o'clock. When I went out he was out in the rear

in a chair. I slipped him inside the stairway and bolted the door to and that locked. He could go up stairs to where he lived, but he could not get anywhere else.

Q. Do you know where he was about your closing hour, about that time?

A. He was out on the street.

Q. When you closed your saloon?

A. Yes, sir, he was out there asleep.

Q. That was at 10 o'clock?

A. Yes, sir.

Q. There is an ordinance of the city requiring the saloons to be closed then?

A. Yes, sir, promptly at 10 o'clock.

Q. Did you see him at that hour?

A. When I locked the door, yes, sir. He was out in the street asleep. He wasn't asleep when I closed, but he was when I went away.

Q. How did it come that you closed your saloon at 10 and did not leave until nearly 11?

A. I close at ten o'clock every night. I have to do it. I stayed there for the purpose of arranging matters and straightening up matters for the next day.

Q. So you say it was near or about eleven when you left?

A. Yes, sir, it was very near eleven when I left there.

Q. And he was there at that time?

A. He had then gone to sleep out there in the rear at that time."

Mr. J. M. Prince, a witness for Mr. Ward, was bartender at Mr. Barnes' saloon and testified that he left the saloon at 8:20 the night of the lynching and that he was acquainted with Mr. Ward, and says:

"Q. Where did he live at the time of this lynching?

A. He lived up stairs over the saloon.

Q. State whether or not you remember seeing him on that night,

the night of the lynching of Ed Johnson?

A. Yes, sir.

Q. When and where did you see him?

A. He was in the saloon.

Q. There where you worked?

A. Yes, sir, right where I worked.

Q. You quit at 8:20?

A. Yes, sir.

Q. Was he there then?

A. Yes, sir.

Q. Was he there at the time you left?

A. Yes, sir.

Q. What was his condition that night?

A. Ha! ha! His condition was pretty serious.

Q. In what way?

A. In the way of drunkenness. He was pretty intoxicated; that is all, pretty well intoxicated.

Q. At the time you left at 8:20?

A. At 8:20, yes, sir. I left there at 8:20."

This witness was asked what occurred the next morning to fix it on his mind that Mr. Ward was in the saloon that night, and his answer was that in a conversation with Mr. Ward that he said, "Frank, if you had not been so damned drunk last night you might have been in that too." That is exactly what I told him. (Tr. page 686.)

"Q. And that fixes it in your mind that it was the morning after the lynching of Ed Johnson?

A. Yes, sir.

Q. Mr. Prince, from all the circumstances you have related I will ask you to state whether or not you were positive that he was there on the night you speak of, the night of the lynching up to 8:20?

A. Yes, sir."

Mrs. Ward, wife of the defendant, was called as a witness and testified in this case.

"Q. After supper, say from six to eleven, do you know where Mr. Ward was? Did you see him between the hours of six and eleven that evening?

A. Yes, sir.

Q. Where did you see him?

A. I seen him coming from a restaurant down the street coming up towards the saloon.

Q. Where is the restaurant with reference to Barnes' saloon?

A. It is just one door in between the saloon and the restaurant.

Q. Where did he go when you saw him?

A. He went in the saloon.

Q. What time was that, Mrs. Ward.

A. That was about half past nine. I think it was between nine and ten somewhere. I don't just remember when.

Q. I will ask you to state whether or not you saw him after that time?

A. Yes, sir, I saw him just after the door was closed. I heard Mr. Barnes close his saloon and heard the doors close and I went to the window and looked out and I saw Mr. Ward standing out on the pavement in front of the saloon with some man.

Q. What hour was that?

A. That was just about ten o'clock that I heard the doors close, you know, and I stepped to the window to see if I could see Mr. Ward.

Q. The saloon closed at 10 o'clock.

A. Yes, sir.

Q. That is an ordinance of the city that they close at ten o'clock?

A. Yes, sir.

Q. What time after that did you see him?

A. I don't think I saw him any more then until he came up and went to bed.

Q. About what time was that?

A. It was about eleven o'clock, between 10 and 11, somewhere close to eleven.

Q. I will ask you to state what was his condition that night?

A. Well, he was very much intoxicated.

Q. I will ask you to state whether or not he stayed at home that night?

A. Yes, sir, he didn't leave any more that night.

Q. When was the first time that you heard of the lynching of Ed Johnson?

A. The next morning."

She says she fixes the time in her mind because of the fact that "he was drinking more then than he had usually been, and that morning (after the lynching) when he came up and told me about it I spoke to him about drinking so much, you know."

"Q. You gave him a lecture?

A. Yes, sir.

Q. That was the next morning at breakfast?

A. Yes, sir." (Tr. p. 1004.)

Walter D. Spradley next witness for Ward. Tr. p. 1044.

The said witness, J. N. Stonecipher, was impeached upon the trial of this cause by the following witnesses:

Dr. A. W. Boyd, Tr. p. 509.

W. B. Cox, Tr. p. 512.

J. R. Pitner, Tr. p. 704.

H. D. Rider, Tr. p. 708.

T. J. Moody, Tr. p. 711.

T. J. Sholl, Tr. p. 716.

Ewing White, Tr. p. 659.

M. F. Pitner, Tr. p. 661.

In addition to this Stonecipher is contradicted by the testimony of the defendant, Frank Ward; of Mr. Alfred Hammond, who was a defendant, and who has been dismissed, and also by the defendants

Padgett and Mayes.

In addition to that his testimony is discredited by other proof, that on Walnut street between the jail and the county bridge there was white mud, when it was shown that the conditions that he described and claimed as existing in that street were not as sworn to by him. In this record it appears also that he had been in trouble in the State of Georgia for misappropriating valuables coming into his possession in the postoffice. All of these items with a bad character proven for this man renders his testimony utterly worthless; he is unworthy of belief, and upon the testimony alone of such a man no court would be justified in imposing punishment. The government tried to sustain his character, and called for that purpose G. F. Neese, Tr. p. 1145; S. H. Ledford, Tr. p. 1149; Chas. Smith, Tr. p. 1152, and A. J. Cox, Tr. pp. 1154-5-6.

These witnesses called by the government do not even qualify to speak as character witnesses, and all admit that they do not know his general character, but simply speak of him from what they know of him and which is very limited of their own personal knowledge.

On cross examination Mr. Neese says:

"Q. You never heard his reputation discussed among the people who knew him?

A. No.

Q. You have never heard anybody talk about him one way or the other, have you?

A. No, I never did.

Q. And you are testifying of his character now from your own knowledge, are you?

A. From what I know about him, yes, sir.

Q. And not from the reputation that his neighbors would give him if they were called on to testify?

A. No, for I don't know anything about that."

(Here exceptions were taken to all the testimony of this wit-

ness.)

S. H. Ledford testified as follows:

"Q. Did you ever know John N. Stonecipher?

A. Why, yes, sir.

Q. How many years?

A. Why, I suppose I have known him for, well thirty years.

Q. Do you know his general reputation and character in the community in which he lived down in Georgia?

A. Well, up to about ten years ago when I moved from the neighborhood where he was raised and where I lived.

Q. Up to that time until you moved did you know his general reputation?

A. Yes, sir.

Q. Was it good or bad?

(Exceptions for defendant.)

Q. Did you answer the question, Mr. Ledford? Was that general reputation good or bad?

A. Well, I will say this; with the exception of something that occurred while he was postmaster. There was some talk of his not performing faithfully with money——

Q. Was his general reputation good or bad?

A. Why, outside of that it was good.

Q. You never heard anybody say that J. N. Stonecipher had a good character, did you?

A. I don't think I ever heard them say.

Q. You never heard anybody say they would believe John Stonecipher on oath, did you?

A. I don't think I ever heard it. No.

Q. And the only thing you ever heard said about his character was that he had robbed the Government out of some money while he was postmaster; is not that true?

A. Well, they discussed that. I could not say how it was.

Witness Charlie Smith said on cross examination relative to

Stonecipher:

"Q. You never heard anything said about his reputation about truth and veracity, did you?

A. No, sir, I didn't.

Q. You never heard anything said about whether he would testify truthfully or falsely on oath?

A. No, sir, I did not.

Q. You don't know anything about his reputation amongst the people where he lives?

A. No, I do not."

A. J. Cox on cross examination testified as follows:

"Q. Who did you ever hear say anything about this fellow John Stonecipher?

A. Not anybody.

Q. Not anybody?

A. No, sir.

Q. And not ever having heard anybody say anything about him, you then come into court and swear that he has a good character?

A. So far as I know.

Objections made to the testimony of all the witnesses to sustain Stonecipher's character, on the ground that none of them qualified as required by law.

These objections are all now renewed upon the hearing, as not a single witness who was called by the government to sustain Stonecipher's character qualified under the law.

DISCUSSION.

The Government has failed to make out its case against the defendant, Frank Ward, upon two grounds, either of which entitled him to his discharge before this Honorable Court:

1st. The proof fails to show that he had any connection whatever with the lynching.

2nd. The proof fails to show that he had any knowledge of

the fact that this Honorable Court had acquired jurisdiction of the case of "Ed Johnson vs. the State of Tennessee," and in the absence of such information he could not be guilty of contempt of this Honorable Court. In other words, to make the defendant guilty of a contempt of this Honorable Court it is necessary that he should have in his mind at the time of the commission of the unlawful act, knowledge that this Honorable Court had taken jurisdiction of the Ed Johnson case and his participation either by aiding or abetting in the alleged lynching should be prompted by a spirit of disrespect for the orders of this Honorable Court. On both of these questions the government has wholly failed to make out its case.

The weight of the evidence shows clearly and conclusively that at the very hour of the lynching that the defendant Ward was at the saloon of W. P. Barnes under the influence of strong liquor to such an extent that the witnesses say he was drunk, and probably asleep.

As there is no question about the law in this case, since it has been argued on a preliminary question heretofore, we do not undertake to present any authorities touching this case in the brief, but will present them in the oral argument, if any are desired at the hearing.

We most earnestly and respectfully insist that this defendant is an innocent man; that the proof against him is in the testimony alone of J. N. Stonecipher and that Stonecipher has been successfully impeached and that the defendant Ward has proven a satisfactory alibi, and that he had no knowledge that this Honorable Court had acquired jurisdiction of this cause.

Respectfully submitted,

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In the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Complainant,

vs.

J. F. SHIPP, ET AL.,
Defendants.

No. 5 ORIGINAL,
OCTOBER TERM,
1908.

REPLY BRIEF FOR THE DEFENDANT, LUTHER WILLIAMS.

G. W. CHAMLEE,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys.

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REPLY BRIEF FOR THE DEFENDANT, LUTHER WILLIAMS.

The court is well aware of the original proceeding to punish for contempt for an alleged disobedience of its own orders in this cause. For the purposes of the present hearing the facts and pleadings may be stated briefly and informally.

The information sets forth the conviction at Chattanooga, Tennessee, in the State Court on February 11th, 1906, of the negro Ed Johnson; the imposition of the death sentence; his subsequent petition for habeas corpus, which was heard by District Judge Clark and dismissed, and his application for an appeal to the Supreme Court of the United States; the granting of said appeal and the order to stay all proceedings in the State Courts. And after the granting of his said appeal, that he was taken from the jail in Chattanooga to the bridge over the Tennessee river and there killed.

A rule to show cause was issued upon the information of the Attorney-General. The defendant answered said rule and plead "not guilty" and set out specifically why he was present at the time

of said lynching, but that he was no party to said killing and in general and specific terms plead "Not guilty" to the charge.

The government has filed its brief, insisting that the defendant, Luther Williams, is guilty and is citing the testimony of A. J. Ware and a colored man named Lyons in order to try to sustain its case.

We now call the attention of the Court to the testimony of these two witnesses:

Mr. Ware stated that he saw the lynching at the bridge.

Q—Did you see anybody fire any bullets in him (Johnson)?

A—Yes, I saw some man shoot him.

Q—Who was that?

A—I don't know who it was.

Q—Whom did you recognize as the man?

A—I thought it was Luther Williams.

Q—How long have you known Luther Williams?

A—I have known him some four or five years.

Q—How often do you see him?

A—Not often.

Q—When this man you thought was Luther Williams was shooting, how close was you to him?

A—It was about 22 or 23 feet.

Q—Twenty-two or 23 feet? Did you recognize anybody else there that night, Squire; did you see anybody help to put the noose around his neck with the man you thought was Nolan?

A—I don't know that I recognized anyone positively. I don't know that I can remember now of anybody else that I even thought I knew.

Q—Make your best efforts to recall and see if you can recall anybody else that you recognized there that night; anybody else that was shooting or helping with the noose or helping to bring him out from the jail?

A—I did not recognize anyone coming out of the jail. I thought I recognized one, that was all.

Q—The man you have already spoken of?

A—Yes.

Q—That is Warner?

A—Yes.

Q—Did you recognize anybody helping him?

A—I said I did not.

On cross-examination he gives the following testimony:

Q—You do not say it was Luther Williams, a defendant in this case, who was the man you saw there?

A—I don't say it was him positively; no, sir. I would not make affidavit that it was him.

Q—You don't know who the man was?

A—I am not sure as to who it was.

RE-DIRECT EXAMINATION.

By Mr. Sanford:

Q—You knew all of these men though at that time; you had known all of these men before?

A—Oh, yes.

Q—And you thought at that time they were the men you have named?

A—Not any more than I think now. My opinion is as strong now as it was then.

Q—Your opinion is as strong now as it was then?

A—Yes, I don't know whether it was then or not.

Q—But you thought it was?

A—I thought it was.

Q—Was it or not your best impression at the time?

A—Well, I thought it so strongly that I am telling you I thought it was them. If I had not thought it was them at the time I would not say so now; but I would not make affidavit that it was Luther Williams and neither would I that it was Nick Nolan nor Sheeny Warner, because it was so dark that you could scarcely recognize a man.

Q—Except the one you saw in the lobby?

A—I walked up by the side of Mr. Pritchard right against his

shoulder before I was sure it was Bob Pritchard and I have known him since he was a boy. Tr. p. 395 and 399.

Mr. Ware was recalled as a witness and asked again relative to the lynching.

By Mr. Sanford:

Q—Did you see Luther Williams there on the bridge?

A—I gave my testimony in that case that I thought I saw him but that I would not make affidavit that it was him.

Q—What did you see him do?

A—I don't say I saw Luther Williams do anything.

Q—What is your recollection as to the man you took to be him?

A—He shot the negro when he fell.

Q—How many times?

A—Five.

Under cross-examination he said:

By Mr. Chamlee:

Q—In your testimony the other day you stated then that you did not know whether the man you refer to as Luther Williams was in fact Mr. Williams or not. You did not know it at the time and you did not know it then?

A—I so stated at that time.

Q—You don't know now whether it was Mr. Williams or not?

A—No, sir.

Q—That was a mere impression you had; that is all you undertook to say?

A—That is what I said.

Q—You have been a justice of the peace and a judicial officer for a number of years?

A—Yes, sir.

Q—And you would not go before a court and convict any man on what you say about Luther Williams, would you?

A—I would not.

Exceptions for the Government.

Q—Anyway, you are the judge of what you know about it, and your testimony the other day and what you mean to say now is that you saw a man there and with the slight sight you had of him it seemed to you it might be Mr. Williams?

A—Yes, sir.

Q—But you do not [illegible] and you did not say it was the other day, and you wou[illegible]ay at all that it was Luther Williams?

A—No, sir.

Q—And you do not undertake to create the impression that by having known him for a good while you were swearing now it was Mr. Williams?

A—I do not.

Q—You do not want that impression to be made at all by your testimony that it was Mr. Williams?

A—I do not. It was simply an impression of mine at the time. That is what I stated the other day.

Q—And it is the same with reference to Mr. Warner, that your impression then was that it was him, but you do not want to convey the impression that you are swearing now it was either the one or the other?

A—I do not swear it was him. Tr. page 534, 535, 536.

The other witness, Robert K. Lyon's testimony relative to the defendant Williams, was as follows:

Q—Did you see anybody in the crowd where he was shot or hanged, as the case might be, that you knew?

A—Yes, sir. I saw some leaving there.

Q—Now give us the names of any you saw leaving there?

A—I saw one subject by the name of Williams to my best knowledge.

Q—What is his given name?

A—Luther, I think.

Q—Does he live in Chattanooga?

A—I think he do; yes, sir, he do.

Q—How long have you known Williams?

A—I have known Williams for some years.

Q—About how many years? You knew him well when you saw him?

A—Yes, sir.

Q—Did he tell you anything as he came out towards you?

A—Not a word did I hear him say.

Q—Did he come fast or slow?

A—He come in a pretty rapid gait. He just come walking leisurely along. He wasn't in a hurry and he wasn't anyways slow.

Q—Did he have any fire arms?

A—None as I saw.

Q—You did not see any fire arms?

A—No, sir.

Q—Was Williams the only man you saw coming from that direction?

A—The only one that I knew.

Q—Williams came across from the crowd around Johnson to your crowd?

A—He came from the north end of the bridge to the south end.

Q—Johnson was towards the north end?

A—Yes, sir, he was hung on the east side of the bridge.

On cross-examination he stated:

Q—Williams left you up there near the place (of the lynching) and he came on towards town?

A—He never left me. He passed by me.

Q—Did you speak to him?

A—No, sir.

Q—How long was he away from there before they strung Johnson up?

A—When I saw Williams, why, Johnson had been strung up.

Q—This was after the lynching?

A—Yes, sir.

Q—Did you see anybody else come along there besides Williams?

A—I saw a great many people, indeed I did.

Q—Were any of them lynchers?

A—I don't know, and I have never said that Mr. Williams was a lyncher either. I just saw him coming from that direction.

Q—You don't know whether he had anything to do with the lynching or not?

A—No, sir, I don't. I could not say or swear he did, but I know he came from the direction where the lynching was. Tr. page 351 and 354.

Mr. R. E. Pritchard testified as follows:

By Mr. Sanford:

Q—Did you see who fired the shots?

A—Yes, sir.

Q—Who was it fired the shots?

A—The man that fired the shots was a man that I did not know. Do you want me to tell you about that man?

Q—Yes, that is what I asked you.

A—The man who fired the shots was not Bart Justice or Luther Williams. It was a man who very much resembled Bart Justice who has a moustache; but is lower and who has as much stomach on him and more muscular man and a man I never saw but once before. I met him on Cherry street when there was no one around from whom to find out who he was. The day after the lynching he stopped me and says ———

Q—I am not asking what the man said to you the next day but what you saw that night?

A—That is the next time I saw him and that is the only other time I saw him. Tr. page 780 and 781.

By Mr. Chamlee:

Q—You saw the man on Cherry street after the lynching was over as I understand, that fired the shots into the body of Johnson, the day following?

A—Well, as near as I could be sure of any two men whom I never had seen before, that was the man.

Q—The man spoke to you and said something to you about the lynching?

A—Yes, sir.

Exceptions for the government.

Q—I will ask you to state whether or not the man that you saw fire the shots into the dead body of Ed Johnson was either Luther Williams or Nick Nolan or Bart Justice?

A—No, sir. The man that fired the shots into the man's body was not any man that is a defendant in this case so far as I have seen.

Q—You know all of these three men I have named, Nolan, Justice and Williams?

A—Yes, sir, I know them when I see them. Tr. page 783.

The defendant, Luther Williams, testified in part as follows:

Q—Is your name Luther Williams?

A—Yes, sir.

Q—Are you one of the defendants in this case?

A—Yes, sir.

Q—Mr. Williams, do you remember the night it is said that Ed Johnson was lynched on the 19th of March, 1906?

A—Yes, sir.

Q—Did you go up to the jail that night?

A—Yes, sir.

Q—Did you have anything to do with the cutting of those doors or the helping to get Johnson or lynch him or anything of that kind?

A—No, sir.

Q—Did you have anything at all to do with it?

A—No, sir.

Q—Did you have anything to do with helping to take him out of the jail or taking him to the bridge?

A—No, sir.

Q—Did you have anything to do with helping to lynch Johnson?

A—No, sir.

Q—Did you have anything to say or did you aid anybody else in any way in lynching Johnson?

A—No, sir.

Q—Did you have any pistol or were you armed in any way?

A—No, sir.

Q—Out at the bridge after the man had been lynched did you walk up and shoot five bullets into him?

A—No, sir.

Q—Did you shoot him at all or have anything to do with shooting him?

A—No, sir.

Q—Did you know anybody else that shot him?

A—No, sir.

Q—Mr. Williams, did you know or had you heard previous to this lynching on that day or any other time previous to this that there was going to be any lynching of Ed Johnson that night?

A—That night?

Q—Yes.

A—No, sir, not a word.

Q—Did you have anything to do with it or talk to anybody about getting up a crowd to lynch Johnson or in any manner or in any way in the world have a thing to do with proposing the getting up of this mob to lynch Johnson?

A—No, sir.

Q—Did you have anything to do with the lynching after the mob got him, or help in any way to break the jail or do anything that would aid in the lynching of Johnson?

A—No, sir.

Q—Were you there at the jail and at the bridge where the lynching occurred simply as a spectator.

A—Yes, sir.

Q—I will ask you to state whether or not you went there for the

purpose of taking any part or having any hand whatever in the lynching of Ed Johnson?

A—No, sir.

Q—Did you have any mask on or were you in any way disguised?

A—No, sir. (Tr. page 738, 739, 740, 741.)

Mr. Williams proved a good character by the following witnesses:

By Mr. Chamlee:

Q—Mr. Geismar, do you know the defendant, Luther Williams?

A—I do.

Q—How long have you known him?

A—About five or six years.

Q—Do you think you know what the majority of his neighbors would say about him if they were called on to speak of his general character?

A—I do.

Q—Is that general character good or bad?

A—Good.

Q—From that general character would you give him full faith and credit on his oath in a court of justice?

A—I would.

Q—As to his being a peaceable and law-abiding citizen, Mr. Geismar, do you think you know his character on that subject?

A—I do.

Q—Is that character good or bad?

A—Good.

J. O. Martin, witness.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—How long have you known Mr. Williams?

A—I have known Mr. Williams I think six or eight years, possibly ten years; I am not sure about that.

Q—Do you think you know his general reputation and character in the community in which he lives; that is, what the majority of the neighborhood would say about him if they were called on to speak about him?

A—Yes, sir, I think I do.

Q—Is that general reputation good or bad?

A—It is good.

Q—From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A—Yes, sir.

Witness, Samuel A. Connor.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—Do you think you know the general reputation and character of Mr. Luther Williams, defendant in this case, in the neighborhood in which he lives?

A—Why, I think I do very well, yes sir.

Q—What is that general reputation and character, good or bad?

A—It is good so far as I know.

Q—From that general reputation and character is he entitled to full faith and credit on his oath in a court of justice?

A—Yes, sir.

By Mr. Sanford:

Q—Did Mr. Williams ever get into any trouble that you heard of?

A—Yes, sir.

Q—What was that?

A—He had a difficulty with a negro.

Q—What was the result of that?

A—Why, he killed him.

Q—Did he ever kill anybody else?

A—Not that I know of.

By Mr. Chamlee:

Q—I will ask you if you had not also heard in reference to this same matter that it was an entirely justifiable killing?

A—Yes, sir.

Objections by the Government.

Q—State if you know what was the result of that trouble?

A—I understand the negro was advancing on him with a knife and Mr. Williams shot him.

Q—And he was tried in the courts and acquitted?

A—Yes, sir.

Next witness, C. W. Cox.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—How long have you known him, Mr. Cox?

A—Why, I could not say. Eight or ten years, I guess.

Q—Do you think you know his general reputation and character in the community in which he lives?

A—Yes, sir.

Q—Is it good or bad?

A—I imagine it is good. I never heard anything to the contrary.

Q—From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A—I suppose so. I would believe him on oath. I never heard anything to the contrary. I take it for granted that it is good.

Witness, E. G. Spencer.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—How long have you known Mr. Williams?

A—Seven or eight years, probably longer.

Q—Do you think you know his general character and reputation in the neighborhood in which he lives; that is, what the majority of the people would say about him if called on to speak?

A—Yes, sir, I think I do.

Q—Is that general reputation good or bad?

A—I think it is very good. I never heard anything against him in regard to his character.

Q—From that general character is he entitled to full faith and credit on his oath in a court of justice?

A—He is considered so, yes, sir.

Witness, B. A. Close.

By Mr. Chamlee:

Q—Mr. Close, are you acquainted with the defendant, Luther Williams?

A—I am.

Q—Now, Mr. Close, do you think you know the general reputation and character of Mr. Williams in Chattanooga?

A—I think I do, yes, sir.

Q—Is that general reputation and character good or bad?

A—It is good.

Q—From that general reputation is he entitled to full faith and credit on his oath in a court of justice?

A—I think so.

Witness, T. G. Newman.

By Mr. Chamlee:

Q—Do you know the defendant, Luther Williams?

A—Yes, sir.

Q—How long have you known him, Mr. Newman?

A—Four or five or six years.

Q—I will ask you if you think you are acquainted with the general character and reputation of Luther Williams?

A—I think I am.

Q—Is that general reputation and character good or bad?

A—It is good.

Q—From that general reputation and character is he entitled to full faith and credit on his oath in a court of justice?

A—I think so.

DISCUSSION.

The cross-examination of these witnesses may take some of them without the rule, but there is enough in this record to show beyond any question or controversy that Mr. Williams' record for truth and veracity is good and that he is entitled to full faith and credit on his oath in a court of justice.

The Government has failed to show that Mr. Williams did anything in the world in aiding or assisting in the lynching of Ed Johnson. It has failed to show that he had any knowledge that this Honorable Court had acquired jurisdiction of the case of Ed Johnson vs. the State of Tennessee. His answer denies every material allegation made against him in the information filed by the Attorney-General.

Counsel for the Government in the brief for the Government leave the impression that Mr. Ware swears positive that Mr. Williams was the man that shot five bullets into the dead body of Johnson as it lay on the county bridge. This is shown to be clearly erroneous, and a careful reading of Mr. Ware's testimony does not sustain the contention of counsel for the Government. It is most earnestly insisted that the proof shows that Mr. Williams was simply present as a spectator as were numbers of other people, but that he took no part in the lynching and is not guilty in any man-

ner or in any sense of the charges made and was in no way responsible for the death of Ed Johnson. It is, therefore, confidently urged that the charge against Mr. Williams is not proven and that he should be dismissed.

Respectfully submitted,

G. W. CHAMLEE,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys.

FILE COPY.

No. 5 Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP, ET AL.

SUPPLEMENTAL REPLY BRIEF OF MATTHEW CALLOWAY IN THE ABOVE STATED CAUSE.

MOSES H. CLIFT,
ROBERT B. COOKE,
Attorneys for Matthew Calloway.

BRADFORD-COOKE PRINTING CO., CHATTANOOGA, TENN.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant, vs. JOSEPH F. SHIPP, ET AL. } No. 5, Original.

SUPPLEMENTAL REPLY BRIEF OF MATTHEW GALLOWAY IN THE ABOVE STATED CAUSE.

Said defendant, for reply to the charges contained in the information and statement of the cause, and for evidence of the condition and state of feeling, etc., existing at the date of the lynching of Ed. Johnson, as also to his faithful service rendered theretofore in the protection of the prisoner Ed. Johnson, refers to and adopts the brief and argument therein contained in behalf of J. F. Shipp, sheriff of Hamilton County, and reiterates the statements therein contained in his defense as fully as though herein again set forth.

Defendant Galloway calls the attention of the court, to show that he was not guilty of any of the charges made against him, to the evidence of C. A. Baker, one of the defendants, who was discharged as a defendant by the Government and who is no longer prosecuted as a defendant.

This witness says he went, on the night of the lynching about 8 o'clock, to Eagle Hall. He had not heard any suggestions or hints during that day or night that Johnson would likely be lynched. (*See printed R. p.* 1078.)

He had no communication nor understanding with any supposed lynchers or mobbers. Nothing occurred to arouse his suspicion. The night of the lynching, he was playing a game of cards with Mr. Fred Frawley (one of Shipp's deputies), Jim Elliott, and *Mat Galloway* (another of Shipp's deputies.) While engaged in this game, somebody brought the news that there was a mob at the jail. He got up and left immediately with Mat Galloway and Fred Frawley and went directly to the County jail, running the greater part of the way. In going to the jail they passed Mr. Burke, a policeman. Witness says: "They (the mob) had gone from the jail before *we got there.*" They saw Capt. Shipp at the jail and he told them to go to the bridge as soon as they could. (*See R.* 1079.) Sheriff Shipp told that to Mr. Galloway and the witness. They went to the bridge as soon as they could get guns. Johnson was dead when they got there.

If they had learned earlier that the mob was at the jail, they would have defended jail and prisoner. Jail had not been guarded after Johnson was convicted. (*R.* 1080) No guard had been around the jail from the time he was convicted. (1081) Witness neither saw nor knew anything that indicated danger to Johnson while he was there in jail after being brought back from Knoxville.

On cross-examination, he says he had heard nothing about a telegram; that he saw something about the action of the Supreme Court in the newspaper. That Sheriff Shipp did not tell him about it — did not tell him to come to the jail or be one guard that night (*R.* 1081), but he told them to go to the bridge as fast as they could; remembers Burke speaking to them as they went to the jail, but not what he said. Did not know until they reached the jail that Johnson had been lynched. (*R.* 1082)

He walked back from the bridge with Matt Galloway. (*R.* 1083)

M. J. Horan says that he heard they were going to lynch Johnson a few minutes before the mob came out of the jail. He tells wha tSheriff Shipp said to him and the condition of the sheriff immediately after the lynching. (*R.* 1085-86-87)

Witness says he knows Matt Galloway, Fred Frawley, Marion Perkins. None of these men were at the jail when he first went there. Matt Galloway rushed into the jail just a moment after witness reached there the second time; then witness saw Frawley and Baker. (*R.* 1088)

Will Burke, policeman, testifies that he was on duty the night of the lynching. His beat ran from Market to A. Street on Eighth and Ninth Street; that is, from Eighth to Ninth on Market, on Market, Cherry and Georgia Avenue. The nearest point of his beat on Georgia Avenue and Eighth Street, a little over a block and one-half from the jail at *The Times* building. (*R.* 1058) He heard of the lynching,

something after 10 o'clock. A motorman on the electric car told him. The rope or bell-cord was missing from this car. The bell-rope, he was informed, had been used in lynching Johnson. This information of the lynching of Johnson was after 10 o'clock. About five or six minutes after he got the information of the lynching he saw Mr. Galloway, Mr. Baker and Fred Frawley, deputies, running across Market Street from about the center of the block on the west side near the front of Loveman's, in the direction of the jail. They did not tell him anything. He told them that they were too late; that the negro was already dead. (*R.* 1058-59)

Defendant Galloway testifies, that he was criminal court deputy, or served criminal court papers and made arrests, or in other words served process for witnesses and arrest of criminals. Had no charge of the jail or keeping of prisoners, only when ordered there to guard at night three or four days during Johnson's trial. Had nothing to do with keeping jail at any other time. It was no part of his business to exercise any supervision over the jail or to guard or protect the prisoner. (*R.* 1061-62) Had no connection with the jail or the prisoners at any time after Johnson was brought from Knoxville on the 10th or 11th of March.

Criminal court was in session at the time and he was attending to his duties, serving papers for this court; that while attending his duties he heard nothing or nothing that made him think that Johnson was in danger. Had received no intimation or desire that he should be at the jail for the pro-

tection of Johnson; had heard no threats of lynching. (*R.* 1062-63)

On the night Johnson was lynched, he was at the Eagle Club room. Jim Elliott was there with him, also Baker and Frawley, deputy sheriffs. A Mr. Schwartz was there. Witness was a member of this club. All the parties mentioned as present were members of the club. Witness has been a member of the club two and one-half years; had been there three and four nights in the week generally, sometims every night. Belonged to the Masons, Odd Fellows, Knights of Pythias, Rebeccas, Fraternal Censer, Junior Order, and the Iron Moulders' Union. Went to the Eagle Club about 7:45 p. m. Had at no time prior to the time he went to the club heard anything about any impending lynching or danger. The first information he received of the lynching was some time after 10 o'clock. Someone said they were lynching Johnson or trying to lynch him. Witness left immediately for the jail with Baker and Frawley; went the most direct route from the club room to the jail. (*R.* 1065) When he got to the jail he met Capt. Shipp coming outside the door; ascertained mob had gone with the prisoner. Sheriff asked witness to go to the bridge. He told him as soon as he could get a gun he would go. He wanted a Winchester rifle — got it and went to the bridge at once. (*R.* 1066) Didn't have to wait for a car as one came along as he was ready to go. When they reached the bridge they found Johnson's body. He was dead. Someone ran down and wanted to cut off some of his clothing; didn't see any of

the mob there. Came back to the jail immediately after he saw the body; remained at the jail until after 1 o'clock. No such thing as a luncheon occurred at the jail that night; had not agreed nor combined nor confederated with anybody to have Johnson lynched. Knew nothing of anybody having any intention to lynch him. (*R.* 1068) Witness then detailed the efforts on the part of himself and other deputies in preventing the mob from breaking into the jail some weeks prior to the night Johnson was actually mobbed. (*R.* 1068-69-70-71)

Witness further states that if he had known or had any intimation of this lynching, that he would have done the same thing for the protection of Johnson at the time he was lynched. (*R.* 1071)

On cross-examination, he says that the sheriff did not tell him about the telegram or send him any message in reference to it, neither did any deputy; was not summoned to be at the jail that night. (*R.* 1073)

Mr. Galloway is sustained in his statements as to where he was as hereinbefore shown by deputy sheriffs C. E. Baker, Fred Frawley, Jim Elliott and others, all good, reliable citizens.

It is clear from the foregoing testimony, and other evidence that might be referred to, that the defendant Matt Galloway was not with the crowd or mob that lynched Johnson, and that when we take into consideration the manner in which this defendant exposed himself and his life for the protection and to prevent the mobbing of Johnson there-

tofore, as is shown by the record in this case, it seems preposterous that the able attorneys for the Government should ask this honorable court to convict or hold this defendant to be in contempt of the orders of this honorable court, on the testimony of such witnesses as Henry A. Lee and his wife, both of whom impeach themselves so thoroughly and so effectively that no one, much less this honorable court, could give any credence to their statements; and especially is this true when taken in connection with the impeachment of the various witnesses, as set forth in this record, to-wit, R. L. Killian (*R.* 1231-36), Geo. T. Balfour (*R.* 1237-8), P. C. Kramer (*R.* 1239-34), C. L. Ramsel (*R.* 1244-48), Jno. E. Taylor (*R.* 1248-53), A. V. Odem (*R.* 1254-55), Jno. E. Taylor, recalled (*R.* 1255-6), Dr. H. K. Bearden (*R.* 1256-58), J. N. Payne (*R.* 1258-1260), J. P. Webb (*R.* 1260-61), B. A. Close (*R.* 1261-64), J. H. Jeunot (*R.* 1264-66), J. L. Elliott (*R.* 1266-69), N. A. Smith (*R.* 1269-72.)

To us it is very great surprise that in the face of this testimony, introduced in behalf of defendant Galloway, who establishes a good character and proves beyond question that he was not a member of the mob lynching Johnson, that eminent counsel for the Government should ask his conviction on the testimony of such witnesses as Lee and his wife, and that Government counsel should undertake to distort or twist the testimony of A. J. Ware so as to try to make this testimony of Ware connect this *defendant Galloway*, whom Ware saw on the bridge, with the lynching, when the proof

establishes, beyond question, the fact that Galloway was not only not with the mob or about the jail, or at the bridge at the time the lynching occurred, but, as shown by the proof, was at the time the lynching occurred in the Eagle Club rooms on Market Street and knew nothing of the mob until after the lynching occurred.

This honorable court will look into the conduct and the resistance made by this courageous, faithful officer in the defense of the lives of prisoners in his hands. It will take into consideration all the testimony as presented in the record, and when it does this, we feel confident that this honorable court will discharge this faithful officer, as well as all the officers, including the sheriff and each of his deputies, and commend their faithfulness as officers in the discharge of their duty.

Respectfully submitted,

ROBERT B. COOKE,

MOSES *H.* CLIFT,

Attorneys for Matthew Galloway.

FILE COPY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
JOSEPH F. SHIPP ET ALS,
Defendants.

No. 4 Original.

INFORMATION IN CONTEMPT.

PETITION FOR REHEARING ON BEHALF OF THE DEFENDANT, LUTHER WILLIAMS.

G. W. CHAMLEE,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys for Defendant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
JOSEPH F. SHIPP ET ALS,
Defendants.

No. 5 Original.

INFORMATION IN CONTEMPT.

PETITION FOR REHEARING ON BEHALF OF THE DEFENDANT, LUTHER WILLIAMS.

The information filed in this case by the Attorney-General of the United States, charges in substance that on March 19th, 1906, Ed Johnson, a negro, a Federal prisoner, was taken from the County jail of Chattanooga, Hamilton County, Tennessee, by a mob composed of a large number of armed men, and carried from the jail to the Tennessee River bridge and killed; and among other things in said information, charges that this petitioner, Luther Williams, was one of the men participating in the killing of said Johnson.

The defendant filed an answer to said information in October, 1906, and in his answer he positively, emphatically and unqualifiedly denies the charges and any and all connection with or consent to the lynching of the said Ed Johnson in any form or manner whatsoever.

His answer further says, "That if Ed Johnson was as a matter of law a United States prisoner at the time that he was lynched that no notice of that fact had ever been conveyed to this respondent by any person whomsoever."

In his answer relative to the lynching and soon after learning about it, and being in the saloon business and in close proximity to the county jail, he says, "He knew that if trouble was about to occur in that neighborhood that all saloons ought to close in order to prevent members of the mob becoming intoxicated and committing violence, and for this reason he immediately closed his saloon and in a few minutes went up to the county jail, which is a distance of about 200 yards, and when he got there a mob was in control of the jail."

His answer further says, "He is well known to a number of people who were at his saloon on the night Johnson was lynched and who were about the county jail as spectators at the time, and he was not disguised; made no effort to conceal his own identity; he had no part whatever in aiding or counseling the mob to lynch Ed Johnson, and had nothing in the world to do with the entire trouble. Just like people go to see a great fire or anything else of excitement that is about to happen, he went up to the jail to see what the mob was going to do and what was going to happen to Johnson."

"He denies that he was a member of said mob or that he had anything to do either by word or action, aiding or abetting in the alleged lynching, or that he counseled or conspired or confederated with any person or persons whomsoever to lynch the said Ed Johnson.

"He denies that he endeavored or conspired or confederated or agreed together or formed a combination with any person to break or enter the county jail or to lynch the said Ed Johnson or to do any other act to prevent this Honorable Court from hearing and determining the appeal of the said Ed Johnson, or to show any

contempt for this Honorable Court, and he denies each and every allegation made in the information against him in this cause, that by implication could be construed to mean that he had aided or consented to the lynching of the said Ed Johnson, or committed any other act or conspired, confederated or agreed to commit any other act, or agreed for any other person to commit any act towards the lynching of the said Ed Johnson, or to break or enter the County jail of Hamilton County, Tennessee, or to prevent this Honorable Court from hearing the appeal of the said Ed Johnson, or to show his contempt for the orders of this Honorable Court, or to do any other act that would be disrespectful of this Honorable Court."

"WHEREFORE, this respondent says that he denies each and every allegation made against him in this cause."

The information and the answer raises two distinct propositions that must be determined adversely to him in order to convict this defendant Luther Williams. First: Was Luther Williams a member of the mob, either by word or act, that participated in and brought about the lynching of Ed Johnson? Second: If Luther Williams helped to lynch the negro Ed Johnson, had he at and previous to that time been notified that Ed Johnson was a Federal prisoner?

Upon these two questions this case must be determined.

The majority opinion of the Court in this case says: "There was in the crowd around the jail and at the scene of the lynching a substantial number of law abiding men of good character." The opinion concluding in part as follows: "This brings us to a consideration of the case in respect of the six defendants who were charged as members of the mob and participants in its action."

"As to Williams and Nolan, there is direct testimony to their participation in the lynching, and we do not think that the evidence relied on to weaken that conclusion is sufficient to do so."

With all respect it is submitted:

That the judgment of the Court in this case is manifestly erroneous and should be recalled, reversed and annulled, for the reasons hereinafter stated.

In the first place, it is respectfully submitted that there is no positive or substantial testimony in this entire record to show that the defendant Luther Williams was a participant in the lynching of the negro Ed Johnson. The nearest that was made at evidence against him was the "thought" of the witness A. J. Ware. In order that we may analyze his testimony and not make any mistake about it, we have copied immediately hereafter what Mr. Ware said relative to Mr. Williams:

Mr. Ware stated that he saw the lynching at the bridge.

By Mr. Sanford:

"Q. Did you see anybody fire any bullets into him (Johnson)?

A. Yes, I saw some men shoot him.

Q. Who was that?

A. I don't know who it was.

Q. Who did you recognize as the man?

A. I thought it was Luther Williams.

Q. How long have you known Luther Williams?

A. I have known him some four or five years.

Q How often do you see him?

A. Not often.

Q. How close was you to these men when this was happening?

A. When the shooting began I got back out of the way.

Q. How close were you when the noose was being put around his neck?

A. I was as close as I am to that table (indicating).

Q When this man that you thought was Luther Williams was shooting, how close was you to him?

A. I was probably as far as from here to the radiator over there.

Q. Which way were you?

A. I was back towards the city.

Q. How far are you from the radiator now, in your judgment? How far is that in feet?

A. It is about 22 or 23 feet.

Q. Twenty-two or twenty-three feet? Did you recognize anybody else there that night, 'Squire; did you see anybody help to put the noose around his neck with the man you thought was Nolan?

A. I don't know that I recognized anyone positively. I do not know that I can remember now of anyone else that I even thought I knew.

Q. Make your best efforts to recollect and see if you can recollect anybody else that you recognized there that night; anybody else that was shooting or helping with the noose or helping to bring him out of the jail.

A. I did not recognize anyone coming out of the jail. I thought I recognized one, that was all.

Q. The man you have already spoken of?

A. Yes.

Q. That is Warner?

A. Yes.

Q. Did you recognize anybody helping him?

A. I said I did not.

On cross-examination Mr. Ware was asked:

Q. You were a justice of the peace at the time?

A. I was.

Q. And you had an office on East Ninth street, where great numbers of people congregate?

A. Yes, sir.

By Mr. Chamlee:

Q. You referred to a man out at the bridge that you said at the time you had some suspicion or intimation in your mind was Mr. Williams?

A. Yes, sir.

Q. You do not say it was Luther Williams, a defendant in this case, who was the man you saw there?

A. I do not say it was him positively; no, sir. I would not make affidavit that it was him.

Q. You do not know who the man was?

A. I am not sure as to who it was.

RE-DIRECT EXAMINATION.

By Mr. Sanford:

Q. You knew all of these men though at that time; you had known all of these men before?

A. Oh, yes.

Q. And you thought at that time they were the men you have named?

A. Not any more than I think now. My opinion is as strong now as it was then.

Q. Your opinion is as strong now as it was then?

A. Yes, I do not know whether it was them or not.

Q. But you thought it was?

A. I thought it was.

Q. Was it or not your best impression at the time?

A. Well, I thought it so strongly that I am telling you I thought it was them. If I had not thought it was them at the time I would not say so now; but I would not make affidavit that it was Luther Williams and neither would I that it was Nick Nolan nor Sheeny Warner, because it was so dark that you could scarcely recognize a man.

Q. Except the one you saw in the lobby?

A. I walked up by the side of Mr. Pritchard, right against his shoulder, before I was sure it was Bob Pritchard and I have known him since he was a boy. Tr. p. 395 and 399.

Q. Do you know whether there had been any rumor that the

negroes were going to go for the lynchers? Had you heard anything of that sort?

A. There was some shooting down on the right hand side of the bridge and I got two or three little shot through an overcoat that I had on. I thought by that it was them. It came from the upper side.

Mr. Ware was recalled as a witness and asked again relative to the lynching.

By Mr. Sanford:

Q. Did you see Luther Williams there on the bridge?

A. I gave my testimony in that case that I thought I saw him, but that I would not make affidavit that it was him.

Q. What did you see him do?

A. I don't say I saw Luther Williams do anything.

Q. What is your recollection as to the man you took to be him?

A. He shot the negro when he fell.

Q. How many times?

A. Five.

Q. Five times?

A. Yes.

Q. How close were you to him at that time?

A. In the neighborhood of twenty or twenty-five feet.

Q. How long had you known Luther?

A. Why, I have known him for several years, but I have only been associated with him for the last three or four years—since he was a little boy.

Q. How have you been associated with him?

A. Well, just meeting him.

Q. Do you belong to any lodge with him?

A. I think so.

Q. You do belong as a matter of fact to the lodge he belongs to?

A. I do.

Q. And Nick Nolan belongs to that lodge?

A. He does.

Q. And Luther Williams and Charlie Powell belong to that lodge?

A. If Charlie Powell does I don't know.

Under cross-examination he said:

By Mr. Chamlee:

Q. In your testimony the other day you stated then that you did not know whether the man you refer to as Luther Williams was in fact Mr. Williams or not. You did not know it at the time and you did not know it then?

A. I so stated at that time.

Q. And you do not know now whether it was Mr. Williams or not?

A. No, sir.

Q. That was a mere impression you had; that is all you undertook to say?

A. That is what I said.

Q. You have been a justice of the peace and a judicial officer for a number of years?

A. Yes, sir.

Q. And you would not go before a court and convict any man on what you say about Luther Williams, would you?

A. I would not.

Exceptions for the Government.

Q. Anyway, you are the judge of what you know about it, and your testimony the other day and what you mean to say now is that you saw a man there and with the slight sight you had of him, it seemed to you it might be Mr. Williams?

A. Yes, sir.

Q. But you do not say it was and you did not say it was the other day, and you would not say at all that it was Luther Williams?

A. No, sir.

Q. And you do not undertake to create the impression that by having known him for a good while you were swearing now it was Mr. Williams.

A. I do not.

Q. You do not want that impression to be made at all by your testimony that it was Mr. Williams?

A. I do not. It was simply an impression of mine at the time. That is what I stated the other day.

Q. And it is the same with reference to Mr. Warner, that your impression then was that it was him, but you do not want to convey the impression that you are swearing now it was either the one or the other.

A. I do not swear it was him. Tr. p. 534, 535, 536."

We desire to call the attention of the Court to the fact that Mr. Ware nowhere says that he can or would undertake to identify Luther Williams as being one of the lynchers in this case. In answer to the question as to who it was that shot Ed Johnson, Mr. Ware said "I don't know who it was." In another answer he says "I don't say it was him positively; no sir; I would not make affidavit that it was him." In another answer he says: "I am not sure as to who it was." The strongest thing that he says about it is, "I thought it was Mr. Williams."

Mr. Ware says in explaining why he could not tell who the parties were that killed Johnson: "It was so dark that you could scarcely recognize a man. I walked up by the side of Mr. Pritchard, right against his shoulder, before I was sure it was Bob Pritchard, and I have known him since he was a boy."

Mr. Ware was asked:

Q. "When this man you thought was Luther Williams was shooting how close was you to him?

His answer was, "About 22 or 23 feet."

We submit that right here Mr. Ware shows that he was not close enough to recognize the man doing the shooting, because he

was almost against Mr. Pritchard, whom he well knew, before he could recognize Pritchard. Therefore, it will not do to say that Mr. Ware could recognize Mr. Williams 22 or 23 feet away when he could not recognize Pritchard until he was right against his shoulder.

Mr. Ware was asked this question:

Q. "You don't know whether it was Mr. Williams or not?"

A. "No, sir."

Q. "That was a mere impression you had that is all you undertake to say?

A. "That is what I said.

"You have been a justice of the peace and judicial officer for a number of years?

A. "Yes, sir.

Q. "And you would not go before a court and convict any man on what you say about Luther Williams, would you?

A. "I would not.

Q. "And you do not undertake to create the impression that having known him for a good while, you swear now it was Mr. Williams?

A. "I do not.

Q. "You do not want that impression to be made at all by your testimony, that it was Mr. Williams?

A. I do not. It was simply an impression of mine at the time. That is what I stated the other day."

It is most respectfully submitted that there is nothing in this testimony to convince the mind or to lead to the conclusion that Mr. Ware's testimony proves a thing in the world other than he saw some man shooting Ed Johnson and that he had a bare impression at the time, or "thought" that it was Luther Williams, and at the same time shows himself to be such a distance away from the man doing the shooting and explains that it was so dark that he could not recognize a man until he was right up against him. It is

respectfully submitted that no man ought to be convicted or even indicted under this evidence, because the witness himself is not willing to say under his oath or to make affidavit that the defendant Williams is the guilty party; and we cannot well conceive how, if the witness is unwilling to swear that the defendant is the guilty man, that this Honorable Court could conclude from the evidence of Mr. Ware that the defendant Williams ought to be held for contempt of this Honorable Court.

It seems to us that the testimony of Mr. Ware, in view of his official position, ought to be considered as vindicating rather than convicting this defendant, because Mr. Ware says that he would not himself convict any man on what he knows about this case! Moreover, at the time of this lynching, Mr. Ware was a justice of the peace with an office, doing business under the laws of the State of Tennessee; and it was his duty under the statutes of Tennessee, if he knew or had reason to believe that Luther Williams was guilty of this offense, to issue a warrant for his arrest and to have him committed to jail. There is nothing in this evidence, as we construe it, that shows that Mr. Ware was inclined to conceal or withhold anything that he knew about this case, but, on the contrary, that he made the strongest statement that he could make and keep within the bounds of what he conceived to be the truth, and yet that was simply an "impression" of his at the time of the killing, that it was probably Mr. Williams to whom he referred. If Mr. Ware had been disposed to conceal the fact that he thought Mr. Williams was connected with this offense, he could easily have done so by remaining silent, and he being a peace officer under the State law, it was his sworn duty after this crime had been committed to enforce the law of the State, if he knew or had reason to believe, or, if as the statute of Tennessee says, if there was "probable cause to believe" that the defendant was guilty, then and in that event, it was his duty to issue a warrant for the arrest of the defendant, and he did not see fit to do so. And it cannot be

said that Justice of the Peace Ware was afraid or unwilling to do his duty, nor that as a judicial officer he was unfit for the position he held.

The next witness that mentioned in the record the name of this defendant, was a colored man named Robert K. Lyons. We wish to call the Court's attention to the evidence of this man, as it is evident that he was so negligent that little or no dependence should be placed in or credence given to what he swears. He was asked about the lynching, and said that he went to the jail and followed the mob out to the bridge and that he saw Mr. Williams coming away from the bridge after the lynching, and he was asked as to the lynchers the following question:

"Q. Did you see anybody else come along there besides Williams?

A. I saw a great many people; indeed I did.

Q. Were any of them lynchers?

A. I don't know, and I have never said that Mr. Williams was a lyncher, either. I just saw him coming from that direction."

From this statement it is manifest that this witness does not know whether Mr. Williams had anything to do with the lynching or not. All that he says is, that he knows that Mr. Williams came from the direction where the lynching was.

Now, we want to look at his evidence a little further.

"Q. How long have you known Williams?

A. I have known him for some years.

Q. Did he come fast or slow?

A. He came in a pretty rapid gait. He just come walking leisurely along. He wasn't in a hurry and he wasn't anyways slow."

We submit that not the slightest credence should be given a man who would go on a witness stand and under oath volunteer a statement like this.

This witness was further asked relative to Mr. Williams:

"Q. Did he have any firearms?

A. None as I saw.

Q. You did not see any firearms?

A. No, sir. Tr. p. 352."

Now, it should be borne in mind that if this witness had seen Mr. Williams shooting Ed Johnson at the time of the lynching when Williams passed out by the witness, he would certainly have tried to identify him as one of the alleged lynchers. And in view of the prejudice and the feeling that he exhibited, as shown by this record, it is absolutely certain that if he had known that Mr. Williams was the man that he would have sworn positively to that fact upon the trial. And the very fact that he failed to do so shows that he did not know who the parties were that killed Ed Johnson. If his testimony is to be believed at all he proves for the defendant Williams that the defendant did not have on a mask and was not disguised, and, therefore, the insinuation that Mr. Williams may have been disguised is shown to be untrue.

Another statement in the testimony of this witness, we desire to call to the attention of the Court, is contained in the following question and answer:

"Q. When this man Williams passed you, were you on the bridge?

A. I was, sir; yes; right near the end of it.

Q. Where was Williams at the time the man was lynched?

A. I couldn't tell you. I am inclined to think he was back there with the rest of them in the crowd.

Q. Do you not know whether or not Williams had passed you into town before the man was lynched?

A. I do not; no, sir.

Q. You did not see Willims have anything to do with the lynching?

A. I couldn't see anything that anybody had to do with the lynching at all, sir. Tr. p. 353"

From these questions and answers it is evident that this witness does not know whether Williams was a party to this lynching or not.

This witness says that he does not know whether Mr. Williams was a lyncher or not; that he saw him coming from the bridge and recognized him, because he was acquainted with him; that he did not see any firearms, and there is nothing in his evidence to show that Mr. Williams was not present as a spectator just as a large number of other law abiding citizens were on this occasion.

Lyons further testified as follows:

"Q. Were any of them lynchers?

A. I don't know, and I have never said that Mr. Williams was a lyncher either. I just saw him coming from that direction."

Now it cannot be insisted or argued from any evidence in this record that this witness proves a single circumstance connecting Williams with this lynching.

It must be borne in mind all the time that Mr. Williams in his answer admitted having gone to the jail and followed the mob out to the bridge, as did a number of other law abiding citizens, but it has never yet appeared to us that that was an offense for a citizen to follow a mob at a lynching, and we were surprised at the argument of the Attorney-General, Mr. Bonaparte, when this case was on trial, when he said that Mr. Williams was "placidly" consenting to the lynching of Ed Johnson, and that he based his reason for a conviction upon the ground that Mr. Williams was present and "placidly" consented to the lynching.

There is no criminal statute in the law books that we have been able to find or any judicial decision that says that the presence and nothing more at a lynching is a violation of the law. Many law abiding people might just as well have been convicted in this case for being present and failing to offer resistance as Mr. Williams. Some men offer resistance, it is true, because they want to uphold the law. Others fail to offer resistance who are equally

willing to uphold the law, but are afraid the slightest offer of resistance would mean their own death; and it is not surprising that a stranger who was not an officer would stand by and take no hand on either side in the lynching, such as that referred to in this case.

If there was any question about Mr. Williams being an innocent man without taking his own testimony at all into consideration, we submit that that question is settled absolutely and unqualifiedly by Mr. R. E. Pritchard, who testified as follows:

By Mr. Sanford:

"Q. Did you see who fired the shots?

A. Yes, sir.

Q. Who was it fired the shots?

A. The man that fired the shots was a man that I did not know. Do you want me to tell you about that man?

Q. Yes, that is what I asked you.

A. The man who fired the shots was not Bart Justice or Luther Williams. It was a man who very much resembled Bart Justice, who has a moustache; but is lower and who has as much stomach on him and more muscular man and a man I never saw but once before. I met him on Cherry street when there was no one around from whom to find out who he was. The day after the lynching he stopped me and says—

Q. I am not asking what the man said to you the next day, but what you saw that night?

A. That is the next time I saw him and that is the only other time I saw him. Tr. p. 780 and 781."

By Mr. Chamlee:

"Q. You saw the man on Cherry street after the lynching was over as I understand, that fired the shots into the body of Johnson, the day following?

A. Well, as near as I could be sure of any two men whom I never had seen before, that was the man.

Q. The man spoke to you and said something to you about the lynching?

A. Yes, sir

Exceptions for the Government.

Q. I will ask you to state whether or not the man that you saw fire the shots into the dead body of Ed Johnson was either Luther Williams or Nick Nolan or Bart Justice?

A. No, sir. The man that fired the shots into the man's body was not any man that is a defendant in this case so far as I have seen.

Q. You know all of these three men I have named, Nolan, Justice and Williams?

A. Yes, sir, I know them when I see them. Tr. p. 783."

We beg to call the attention of the Honorable Court to the explanation that Mr. Pritchard gives as to how he knows that the man who fired the shots into the dead body of Ed Johnson was not Luther Williams. The next day after the lynching in this case Mr. Pritchard met the man on Cherry street and the man stopped and spoke to him, and Mr. Pritchard swears positively and emphatically that the man who fired the shots "was not Bart Justice or Luther Williams." He says, "It was a man who very much resembled Bart Justice." There is not a word in the record that indicates that Williams and Justice look anything alike, but on the contrary that Williams was a man of small stature while Justice was a tall man, a blacksmith, large, muscular and very strong. Mr. Pritchard says that the man that fired the shots was a man that he had never seen before, while he says:

"Q. You know all of these three men I have named, Nolan, Justice and Williams?

A. Yes, sir, I know them when I see them."

Counsel for the government in their brief filed in this cause refers to Mr. Pritchard's testimony as follows: "Pritchard's testi-

mony which apparently conflicts with this very positive testimony of Ware is of little value because of Pritchard's dazed condition at the time of the shooting, Pritchard a few minutes before having been knocked down by a severe blow. It is possible that Pritchard's testimony refers to some other man who may have fired."

This argument is plausible, yet fallacious for the reason that Mr. Pritchard was not dazed the next day when he met the man on Cherry street, and whatever may have been said about his condition at the time of the actual lynching, it is completely cleared up by the fact that on the next day he met this identical lyncher on Cherry street and the man spoke to him about their troubles of the night before, and Mr. Pritchard swears positively and emphatically that that man was not Luther Williams.

Mr. Attorney-General Bonaparte in his closing speech in this case referred to the following extracts in the testimony of Mr. Williams and insisted it was significant that some one should ask him "why he was not at the lynching."

"Q. How came you to go up to the jail at all and to follow this mob, Mr. Williams?

A. Well, I was in the saloon at work and some one came to the rear end of the saloon and asked me why I wasn't up to the jail; and I asked him—

Q. I did not ask you for any of the conversation.

A. Some one came to the rear of the saloon and notified me that there was a mob up at the jail.

Q. What I was asking about was, whether or not you went up to the jail for the purpose of helping lynch Ed Johnson or for some other reason?

A. Well, it was natural to go to a thing of that kind if you heard of it, as a spectator."

Mr. Bonaparte had the advantage at the time of his speech of closing the case, when counsel for Williams had no opportunity of

a reply, and when this matter had not been referred to in the brief of the Government nor in the opening argument of its Counsel. Mr. Bonaparte forgot to call the attention of the Court to the fact that Mr. Williams was asked the following questions and made the following answers:

"Q. And you don't know the man that came for you?

A. No, sir; he did not come for me that I know of. He just mentioned it to me.

Q. Did you close your saloon at once?

A. Well, not at once. I closed it in a very few minutes, because everybody left there about that time.

Q. Did you close it up yourself?

A. Yes, sir.

Q. What became of your bartender?

A. I was tending bar alone that night."

When asked about who he saw at the jail and as to his movements and actions there, the folowing is important:

"Q. Did you speak to anybody?

A. I remember saying, 'how do you do.'

Q. Who did you 'how do you do' to?

A. Dr. Sutton.

Q. Was that downstairs or upstairs?

A. That was upstairs.

Q. Dr. Sutton was upstairs, was he?

A. Yes, sir.

Q. Did you recognize anybody up there besides Dr. Sutton?

A. I recognized Jailor Gibson, Sheriff Shipp and Dr. Sutton."

The government had the benefit of this statement and an opportunity of asking Sheriff Shipp, Jailor Gibson and also Dr. Sutton if Mr. Williams had any part in the lynching of Ed Johnson; and both Sheriff Shipp and Jailor Gibson stated that they did not

know the men doing the lynching, and especially do they make no reference to Mr. Williams as being a party to that unhappy occurrence.

Solicitor-General H. M. Hoyt in discussing this case with others, said to this Honorable Court that the Government "did not have a perfect case" and at no time in his speech did he ever say that he thought or that he believed that under the evidence that this man ought to be convicted.

Mr. Bonaparte did not insist that this defendant was an "active participator in the lynching," other than the reference in his brief to Mr. Ware's testimony, but his argument was in the main that Williams was present and a "placid" consenter to the lynching.

Upon the facts with deep respect we insist that under the proof this is an innocent man. That this Honorable Court has made a mistake in its finding in this case.

"Now, has the Government shown that Luther Williams knew that Ed Johnson was a Federal prisoner? We challenge this record from first to last, and assert that there is not one word of evidence anywhere that shows that Mr. Williams knew or had ever heard from any source whatsoever that Ed Johnson was a Federal prisoner, and in his answer Mr. Williams sets up this defense and put the Government on notice many months before the testimony was taken in this case; and on that branch of the case the Government wholly and totally failed to produce one word of proof to show that this man Williams knew that Ed Johnson was a Federal prisoner. In the absence of such knowledge on the part of Williams, it is impossible to say that he could be guilty of a contempt of this Honorable Court, because in order to make a contempt of court the offender should do or perform a wrongful act for the very purpose of displeasing, or showing disrespect to or for the orders of the Court, or ignoring or otherwise violating the order of the Court. And a man could not be guilty of contempt of Court who was six or seven hundred miles away from the Court when he did

not know that the prisoner that was about to be lynched was a Federal prisoner or that this Honorable Court had acquired jurisdiction of this case. It may be said that this is a technical defense, but in any case where a man is innocent, and under such flimsy evidence as is here offered against, him, we most earnestly and respectfully submit that the defense, of "want of notice," is a legitimate defense, eminently just, and one that this Honorable Court will not ignore. In other words, notice is essential in every case of an injunction having been issued by a Court before the violators of that injunction can or should be punished for a contempt.

In this case we have a printed record composed of over twelve hundred pages, and there is not one word in that record that says any living man or any newspaper publication or any other kind or character of information was ever conveyed to the defendant Luther Williams so as to inform him that Ed Johnson was a Federal prisoner, or that an appeal had been granted in his case.

With deep respect we insist that if we were to concede for the sake of argument (but we do not concede it for any purpose), if we were to concede for the sake of argument that the defendant was a member of the mob that lynched Ed Johnson, and that that fact were established by the proof, it would not constitute a contempt of court under the law, for the reason that in order to make a contempt it is necessary that the offender have in his own mind and heart the purpose of showing his contempt by some outward act or omission to act, which would be displeasing to the Court or in violation of its orders.

Now in this record the Government's solicitors were especially vigilant in trying to prove notice to the Sheriff that an appeal had been allowed Ed Johnson by this Honorable Court. Now, if it were necessary to prove notice to the Sheriff of the granting of said appeal, can it be said that this defendant shall be convicted and punished upon the charge of contempt of this Honorable

Court without proof of any notice being made to him that Ed Johnson was a United States prisoner? Shall it be said that this Honorable Court will presume that because the newspapers in Chattanooga published on the day of the alleged offense, that an appeal had been granted to Johnson, that such publications were notice to this defendant when he swears positively and emphatically that he did not know of such a fact and never heard of it or learned it from any person whomsoever? It is with profound respect insisted that this Honorable Court cannot and should not impose a penalty or convict any man unless the proof in the case necessary to constitute every link in the chain of evidence is complete and that that evidence is sufficient to convict the defendant in a criminal case beyond a reasonable doubt.

A contempt proceeding has been held to be a criminal case and the same rule of evidence should apply to this trial that should be applied if this defendant were on trial in the State Court. Why should the Government insist on proving notice to the Sheriff if it were not necessary that the Sheriff have notice that Ed Johnson was a Federal prisoner? And we submit that no lawyer would argue before a Court that the Sheriff could be punished for a contempt if he had not been notified that Johnson was a Federal prisoner before the lynching of Johnson.

If it were necessary to give notice to the Sheriff, it is necessary to give notice to Williams or that Williams should have notice from some source. And the evidence in this case fails to show any notice to Williams from any source whatsoever.

Surely this Honorable Court will not presume that because the newspapers in Chattanooga published inflammatory reports about this case that every man in that large city read all the papers and knew from a reading of the papers of the orders of this Honorable Court. We have searched earnestly and diligently for some authority in the law books to authorize or justify a Court in charging to a defendant notice in some newspaper in the current publications

or news columns of such paper, but nowhere have we been able to find that a Court was authorized or justified in inferring that a defendant had notice because the same was written in the news columns of a newspaper, when an order authorizing publication of the order of Court had not been made and the publication made by the Clerk or some officer authorized by law to make such publications. Judgments and decree of courts are void for want of notice. Shall it be said in this case that notice may be dispensed with or notice inferred from newspaper publications? We most respectfully submit that in the decision of this case that this question must have escaped the attention of this Honorable Court.

Again, can it be said that because a man is guilty, if such were the case, of assisting in a lynching, that this Honorable Court would punish him for contempt without his having any notice of the orders of this Honorable Court because he was guilty of a felony although no notice had ever been given to him; we know that such a thing as that would be impossible with this Honorable Court. It may be argued, that a man who would aid or assist in a lynching would commit perjury in order to escape its penalties, and this argument may be well founded, and it may be said that a man will swear that he did not know that the victim was a Federal prisoner in order to escape the penalties of the law, and it may be true that a man who participated in such lynchings would not hesitate to commit perjury. But we submit the fact that criminals of that class might be willing to commit perjury does not relieve the Government or the courts from the necessity of complying with the forms of the law before a conviction is authorized or justified. And one of the necessary forms of the law is that "notice" shall be conveyed to the defendant through some channel or medium that will inform him that the victim was a Federal prisoner, and that when he has denied that he ever heard that the victim was a Federal prisoner, as is made in the record in this case, that then the forms of the law have not been complied with. And it is in our opinion

an overturning of all precedents that have been established from the foundation of the republic, for this Honorable Court to say that Luther Williams is guilty of a contempt of this Honorable Court upon the record in this case. And we respectfully submit, with deep respect to this Honorable Court, that there is not one word in this entire record to establish notice to this defendant that Ed Johnson was a Federal prisoner. It may be argued that ignorance of law is no excuse, and with that argument we are entirely agreed. But we insist that there is a vast difference in ignorance of the law and ignorance of an order of this Honorable Court. That ignorance of the law is no excuse, but ignorance of fact which would be ignorance of the issuance of an order of this Honorable Court, would be and always is and always has been a good excuse for non-compliance with injunctions from this Honorable Court.

In the opinion of Mr. Justice Holmes, delivered on the hearing of the preliminary questions of law in this case, it was said, "If the presence and acts should be proven there would be little room for the disavowal of intent. It may be found that what created the mob and led to the crime was the unwillingness of its members to submit to the delay required for the appeal. From that to the intent to prevent that delay and the hearing of the appeal is a short step."

We submit that it has not been proved in the first instance that Luther Williams was a member of the mob or that he was unwilling to submit to the delay required for the appeal of Ed Johnson. Our construction of this part of the opinion of Mr. Justice Holmes is, that if the presence of the parties and their active participation in the lynching should be proven after the parties had been notified by telegram or had read it in the newspapers, or learned it from some other source, then, and in that event, there would be little room for the disavowal of the intent to prevent the delay required for the appeal. But the proof does not sustain the charge, and, therefore, the decision on the preliminary question does not settle

the question that a man can be convicted of a contempt of Court for violating an order of Court, when he had no knowledge that such an order had ever been made, issued or published.

It was said in the brief of Counsel for the Government, "When this Court granted a stay of execution upon application of Johnson, it became its duty to protect him until his case should be disposed of. It matters not with what crime he was charged. It is immaterial what the evidence was at the trial."

With that sentiment we are entirely agreed. It was the duty of this Honorable Court to protect Johnson until his appeal could be heard and his rights vindicated under the Constitution. But the same obligation to protect him in his rights rests with this Honorable Court to protect this defendant Luther Williams, who comes into this Honorable Court humble and poverty stricken, asserting that he is an innocent man and begging that his rights be preserved under the Constitution and that he shall not be committed to jail or fined by this Honorable Court until the law and the Constitution have been complied with and evidence produced upon his trial that shows that he is guilty of aiding or encouraging the lynching of Ed Johnson after notice of some character had been conveyed to him, either by being told or having read it in the newspaper, or been informed in some mode or manner that Ed Johnson was a Federal prisoner and that this Honorable Court had made and entered an order granting his appeal and ordering a stay of all further proceedings in his case.

From an examination of this record it will appear unto your Honors that there is no proof in the entire transcript of notice of any kind that this defendant knew or had ever heard that this Honorable Court had made an order granting an appeal to Ed Johnson and directing a suspension or a stay of all further proceedings in his case by the State authorities. We submit that it cannot be said that this Honorable Court would be authorized to infer that his defendant knew or had been informed of the pro-

ceedings and orders taken by this Honorable Court, because he was present and witnessed the lynching in this case. In other words, as we understand the law, this Honorable Court will not infer without proof to sustain it that the members of the mob that lynched Ed Johnson lynched him solely and alone to prevent the delay necessary for this Honorable Court to hear and determine the appeal of the said Ed Johnson, because it must be apparent to your Honors that the cause producing the death of Ed Johnson was not the fact that he had appealed to this Honorable Court, but it was the belief in the mind of the lynchers that Johnson had committed in Tennessee a most horrible crime, and it was for his crime that he was lynched and not because he had appealed to this Honorable Court.

It is now submitted that if the alleged lyncher did not know that Ed Johnson had taken an appeal to this Honorable Court that this Honorable Court could not convict him of knowingly or wilfully violating an order of this Honorable Court. And it is further submitted that a man would not be guilty of a contempt of Court if he did not know that the Court had issued an order in the case, or if he did not know that his act in the premises would be in disobedience of or in violation of the order of the Court.

Mr. Williams testified in his own behalf in this case and explained why he was present both at the jail and at the bridge; that he was a mere spectator, as were many other law abiding citizens; and that he had no part whatever in the lynching; and that he is not guilty of any charge made in the information. He proves by a number of witnesses that he is a man of good character and entitled to full faith and credit on his oath in a court of justice.

It is submitted that this Honorable Court is putting a construction upon the evidence of Mr. Ware and the colored man Lyons that is far stronger than either of said witnesses meant or intended their

evidence to be, and in a large measure making said evidence of said witnesses mean just the reverse of what the witnesses evidently intended this Honorable Court to understand.

When each of these two witnesses stated that they did not know whether Luther Williams was one of the alleged lynchers or not, it was in the mind of the witness at that time that that statement would end the case as far as Williams was concerned. And we do not hesitate to say that in our opinion that if this case could be reopened for a further examination of these two men that they would say to your Honors that they could not rest satisfied for this man to be fined or imprisoned, if it had to be done alone upon their testimony. When taking this proof, Counsel for Williams understood the law to be that the proof should establish the guilt of the prisoner by a greater weight of the testimony or beyond a reasonable doubt, and that when each of these witnesses stated that it was dark and that they did not know whether Mr. Williams was a member of the lynching party or not, we were so confident that that would end the lawsuit that we felt that there was little left in the case to contend over.

Mr. Pritchard, who was present at the time of the lynching, a man whose character is above reproach and whose word is above question, stated positively that Mr. Williams was not the man that was doing the shooting referred to by Mr. Ware, and in our judgment made this case clear that Mr. Williams was an innocent man. It is, therefore, most respectfully submitted that the great weight of the evidence in this case shows that Mr. Williams is not guilty of either being a member of the mob that lynched Ed Johnson or that he had ever been informed that an appeal had been granted by this Honorable Court to the said Ed Johnson, and that upon both propositions submitted in this petition that

the defendant is entitled to a verdict, and that the rule made against him should be discharged and that he should be dismissed from the attachment.

Respectfully submitted,

G. W. CHAMLEE,
W. H. CUMMINGS,
W. F. CHAMLEE,
Attorneys for Petitioner Luther Williams.

Counsel, with deep respect, certify that the foregoing petition is not interposed for delay, and further certify their sincere belief that the same is well-founded in law.

G. W. CHAMLEE,
Attorney for Defendant Luther Williams.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
JOSEPH F. SHIPP ET ALS,
Defendants.

No. 5 Original.

OCTOBER TERM, 1908.

MOTION FOR LEAVE TO FILE PETITION TO RE-HEAR

Counsel, for Defendant Luther Williams, moves the Court for permission to file a petition to rehear this case.

G. W. CHAMLEE,
Attorney for Defendant.

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SUPREME COURT U. S.

No. 4 ORIGINAL.

In the Supreme Court of the United States

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP, ET AL.

MOTION OF DEFENDANTS, JOSEPH F. SHIPP AND JERIMIAH GIBSON, FOR A RE-HEARING.

MOSES H. CLIFT,
JAMES J. LYNCH,
Attorneys for Defendants Shipp and Gibson.

MACGOWAN-COOKE PRINTING CO., CHATTANOOGA.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
JOSEPH F. SHIPP, ET AL.

No. 5, Original.

MOTION OF DEFENDANTS, JOSEPH F. SHIPP AND JERIMIAH GIBSON, FOR A RE-HEARING.

Defendants, Joseph F. Shipp and Jerimiah Gibson, by leave of the Court first obtained to do so, and with all due and proper respect for the finding of the Honorable Court, move the Court for a re-hearing of this cause and show the following reasons why a new trial should be granted them:

I.

Because, as we respectfully insist, the Honorable Court erred in its holding on the preliminary matters in this cause, and again, in the final finding of the Court that the defendants had not purged themselves of the contempt alleged to have been committed by them, as set out in their answer, denying intention to commit contempt of court and in sub-

jecting them to liability or punishment for the alleged criminal contempt, thereby depriving them of their liberty and right of trial by jury, as provided in criminal offenses, contrary to the law of the land and the rights guaranteed to American citizens.

II.

Because, as we respectfully insist, this Honorable Court erred, in the opinion of the majority of the Court, in treating the case as a civil instead of a criminal contempt, whereas it should have held, if a contempt had been committed by them, that it was a criminal contempt and not civil, and under this record it should have held that there was no contempt committed by these defendants:

First: Because the weight and preponderance of the evidence does not sustain or justify the conclusion or establish the guilt of defendants.

Second: Because there is no material or competent, or at least sufficient, evidence of the character required in criminal cases to sustain the findings or conclusions of the majority of the Court.

Third: Because the opinion of the majority of the Court, while holding defendants guilty of a criminal contempt and subject to punishment therefor, failed to give them the benefit of the presumption of innocence to which they are entitled

under our laws when applied to criminal offenses; it failed to give them the benefit of a reasonable doubt which applies in this country to all trials of a criminal nature. The Court in effect adopted the rule which requires defendants to establish their innocence contrary to the laws and rules heretofore adhered to in this country.

III.

Because the Court, or majority of the court, erred in holding defendants guilty of contempt along lines and on matters not set out in the information which constituted the charges against defendants and that they were required to meet or defend against. In this, the information alleges a conspiracy between defendants and other persons to lynch and murder one Ed Johnson, with the intent to show their contempt and disregard for this Honorable Court, etc., whereas there is no evidence, or at least there is no competent or sufficient evidence of a competent nature, to sustain this charge. The substantive, and in fact the only specific charge or statement of fact or facts set forth in the information, on which the charge of conspiracy was founded and on which the charge of contempt was based, was that the defendants, or defendant Shipp, had removed the guards from the jail in order to facilitate or make more easy the work of said mob. These facts are denied by defendants and the evidence wholly fails to sustain these, or any of the

charges, as against these defendants. Especially is this true when the rule of evidence in criminal cases is applied to the proof offered in this case, as should be done, as it would exclude from the consideration of the Court all newspaper articles, publications, etc., and all hearsay testimony offered in the cause, as incompetent and irrelevant, and the same having been objected to at the time offered, said objections should have been sustained by the Court and said articles and other incompetent evidence excluded from the consideration of the court, as we respectfully insist.

IV.

Because the Court erred in not taking into consideration the disavowal of any intention on the part of defendants to commit a contempt of this Honorable Court and their denial that they intentionally committed any contempt of the Honorable Court, as without this intent so entering into their acts it should not be said that there was an offense.

V.

Because the Court erred in holding these defendants guilty of contempt of the Honorable Court:

First: Because the information upon which the charge is based shows that the defendant Shipp was at the time of the alleged contempt the Sheriff of Hamilton County, in

the State of Tennessee, and an executive officer of the State of Tennessee for said County, and that as such Sheriff was the legal custodian, under the Laws of Tennessee, of all persons duly committed in said County under the Law of said State, to confinement and imprisonment within said jail; "that the said *Ed Johnson was then and there a prisoner confined and restrained of his liberty in the said county jail and in the lawful custody and control of said sheriff and said deputy sheriffs under commitment duly issued out of the criminal court of said Hamilton County.*"

Second: That it was under this commitment from the Hamilton County criminal court of the State of Tennessee that said Ed Johnson was held at the time he was lynched; that while the said Johnson had not been transferred as a prisoner of the United States yet as this record shows and as we respectfully insist the defendants Shipp and Gibson, did all in their power to protect said Ed Johnson from the mob or mob violence; that they exercised their best judgment from the facts known or communicated to them for the protection of prisoners in said county jail.

Third: That having exercised their best judgment and there being no evidence of any threatened or expected mob violence on that night or at the time it occurred, as is shown by the record in this cause, and they having denied any intention to commit a contempt of the order of this Honorable Court and having exercised as executive officers of the

State of Tennessee their best judgment in the premises they should not be held guilty of contempt of the orders of this Honorable Court. Especially is this true under the proof in this record, as it shows that defendants, and especially the defendant Shipp, used extraordinary care and made extraordinary effort to protect the prisoner against violence or danger.

VI.

Therefore, we respectfully but most earnestly insist that for the reasons hereinbefore set forth these defendants should have a re-hearing or that a re-hearing should be granted them by the Honorable Court.

VII.

Defendants will on or before the meeting of the Honorable Court at its next October term present a petition asking said re-hearing in support of this motion, together with a brief of facts and of law sustaining their views as set forth in this motion and reasons why the Court should grant them a re-hearing.

All of which is respectfully submitted.

MOSES H. CLIFT,
JAMES J. LYNCH,
Attorneys for Defendants Shipp and Gibson.

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SUPREME COURT U. S.

No. 4. Original.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP ET AL.

PETITION FOR REHEARING ON BEHALF OF THE DEFENDANT, HENRY PADGETT.

LEWIS SHEPHERD,
M. A. FLEMING,
T. P. SHEPHERD,
Solicitors for Henry Padgett.

1 IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
JOSEPH F. SHIPP ET AL, DEFENDANTS.
} No. 5. Original.

INFORMATION IN CONTEMPT.

PETITION FOR REHEARING ON BEHALF OF THE DEFENDANT, HENRY PADGETT.

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Your petitioner, Henry Padgett, one of the defendants in this case, is greatly aggrieved by the judgment of this honorable court finding him guilty of the contempt charged against him in the information filed by the United States against Joseph F. Shipp and others, and making the rule absolute as to him, and he now comes and presents this petition, respectfully asking the court to rehear and reconsider the case as to him, and to discharge the rule for contempt heretofore issued against him.

(I.)

Your petitioner, affirming his answer that he was not guilty of participating in or aiding the mob which lynched Ed. Johnson, respectfully reminds the court that he was convicted solely on the testimony of John N. Stonecipher, a witness for the complainant, who testified as to certain statements or declarations and confessions alleged to have been made by petitioner, touching the lynching of Ed. Johnson at Chattanooga, Tennessee, March 19, 1906.

2 Stonecipher testified that on the afternoon before Johnson was lynched he met up with petitioner and William Mayes, another defendant, and that petitioner asked him if he had heard what the Supreme Court had done in the Johnson case; to which Stonecipher replied: "I told him that I had understood that they had postponed the execution," and petitioner remarked, "Yes, that is what he understood, and it was a damned outrage." * * * Then pe-

titioner said: "They had no business interfering with our business." * * * That is about all that Padgett said. Then Mayes said: "We will see to that ourselves." This remark to Stonecipher was made in the presence of petitioner. (Printed record, pp. 311–312.) Stonecipher further testified that on the morning of March 20th, after the lynching, he went into Ransom's saloon, and saw Padgett; that he had a copy of the Chattanooga Times, and the first thing he said was, "This damn paper has printed a lie about this lynching." Stonecipher said, "How do you know it is a lie, Henry?" In reply to the question "What did he answer?" witness said, "Well, he told me he was there." Just then Stonecipher says, Alf Handman, one of the defendants, came in, and petitioner turned up his shoes and said, "Why, I haven't got the mud off my shoes yet." Handman replied, "I cleaned mine before I came." The Government's counsel said, "Was anything further said between you at that time?" The witness answered, "And Henry said, 'we did the nigger up all right, didn't we?' Alf says, 'You bet we did.' That is all that was said."

The witness further testified that Walnut street, in Chattanooga, between 3rd and 4th, was paved with white clay or dirt. (Record, pp. 313–314.) This is all the evidence against petitioner, except the testimony of Thomas A. Dobbs, found in the record, page 434, which we quote here.

3 (II.)

This is criminal contempt, and the facts having been denied by petitioner, he ought not to be convicted except on very clear and satisfactory proof. The law of reasonable doubt applies in all criminal cases, and if there is a reasonable doubt of guilt, the accused should be discharged, and we respectfully insist that this rule should be applied in this case. Even if your honors hold that the reasonable-doubt doctrine does not obtain in a contempt case like this, you can not avoid coming to the conclusion that the evidence of guilt to warrant a conviction in this case must be clear and convincing. The burden is on the Government to make out its case by convincing proof.

We respectfully insist that under either rule the petitioner should have been discharged on the case made by the evidence for the Government.

(III.)

The declaration made by petitioner to Stonecipher before the lynching was simply a complaint that the Supreme Court had interfered in a matter which petitioner and Mayes thought was outside of their business. It was silly talk on the part of two ignorant carpenters, but was no evidence of a participation in the lynching which followed. The alleged confession of petitioner in Ransom's saloon on the morning following the lynching was insufficient to authorize conviction of a high crime like the lynching of Ed. Johnson was.

Confessions deliberately made constitute a high grade of evidence, but loose, flippant, idle statements are not to be relied on. It was

the mere bravado of barroom loungers when petitioner said he was at the lynching and that "we did the nigger up all right."

Stonecipher testified about the condition of the paving material on Walnut street between 3rd and 4th, and that when Hand-
4 man came into Ransom's saloon on the morning after the lynching, petitioner, holding up his shoe, said: "I haven't got the mud off my shoe yet." The witness did not answer the question, "What was the condition of his shoes?" (Record, 314.) It was not shown that petitioner had mud on his shoes, or any of the kind of white clay or dirt with which Walnut street was paved was on his shoes.

(IV.)

It is respectfully insisted that this honorable court was in error in the statement of the majority opinion that the alleged statements on the afternoon of the 19th and morning of the 20th demonstrated petitioner's guilt.

The testimony of the witness Dobbs does not corroborate Stonecipher, because the statement of petitioner as to which he testified were made at a different time and place from that related by Stonecipher. Stonecipher refers to a conversation which he says occurred on the inside of Ransom's saloon at 7.30 a. m., when petitioner, Stonecipher, and Handman were the actors. (Record, 314.) Dobbs says that what he heard was in front of Ransom's saloon, and it was in a conversation between petitioner and Stonecipher and Mayes. What petitioner then said was, "They fixed that damned nigger last night." He did not say "we," as Stonecipher said he did inside the saloon. (Record, p. 435.)

(V.)

It is respectfully insisted that the testimony impeaching the character of the witness Stonecipher was enough to overthrow his testimony entirely, and that the attempt to restore him was not a successful one. The alibi proven by petitioner seemed to be a conclusive one. It is respectfully insisted that an alibi when fully established, as this was, is a complete defense. The fact that this defense is often fabricated and fraudulent ought not to militate against an honest alibi perfectly made out, as this was.

5 (VI.)

The witness Stonecipher is contradicted in a material way. The testimony taken for Alf Handman was not printed, because the information was abandoned as to him. His testimony, however, is on file and is a part of the record of this case. Mr. Handman's testimony will be found at page 628 et seq. of the original record. He denies emphatically the entire testimony of Stonecipher as to the saloon episode. He had no conversation with petitioner, was not at the saloon, and did not know either Stonecipher or petitioner. His

testimony was manifestly not considered by the court on the hearing, because it was not printed, but your honors are requested to consider it on this application for a rehearing. In this connection petitioner shows to the court that the record discloses that Handman (called Alf Hammon) did deny the testimony of Stonecipher so far as it related to him. The Attorney-General entered a motion to dismiss the information against Handman (called Alf Hammon) because the evidence was deemed insufficient to justify further prosecution. (Record, p. 1172.)

In the motion the testimony of Stonecipher against Handman is set out in *haec vervae* (Record, p. 1176), and it is averred that these statements of the witness Stonecipher were denied, and the pages of the original record containing the denials are given. (Record, 1176.)

(VII.)

Newly discovered evidence.

After the opinion of this honorable court making the rule absolute against him, and after the court granted petitioner leave to file a motion for a rehearing, which was on June 2, 1909, and after petitioner returned to Chattanooga from Washington, where he was taken in custody of the marshal on an attachment awarded by this court, he ascertained that he could prove by Hon. M. H. Doughty,
6 then president of the board of aldermen of the city of Chattanooga, that petitioner was at the Stag Hotel bar and pool room at the time of the lynching of Ed Johnson. Petitioner herewith files as an exhibit to and part of this petition the affidavit of Mr. Doughty, and asks that the same be considered on this application for a rehearing. Under the facts and circumstances of this peculiar case, petitioner prays your honors to look to and consider the affidavit of Mr. Doughty. It is so pertinent as to fixing the time when the lynching was going on, and comes from such a high source as that the court ought readily to receive it, notwithstanding the ordinary rule which forbids the granting of a rehearing on mere cumulative evidence.

LEWIS SHEPHERD,
M. A. FLEMING,
T. P. SHEPHERD,
Sols.

Counsel for petitioner respectfully certify that the foregoing petition is not interposed for delay, and they further certify that they believe said petition is well founded in law.

T. P. SHEPHERD.

7 I, Henry Padgett, the petitioner in the foregoing petition make oath that, owing to my poverty, I am unable to bear the expenses of printing the petition and exhibit thereto, and I respect-

fully pray this honorable court to hear and consider this petition on the original typewritten draft of the petition instead of on the printed copy.

H. C. PADGETT.

Subscribed and sworn to before me this, the 27th day of September, 1909.

[SEAL.] ELLIOTT M. BUCHANAN,
Notary Public.

8 UNITED STATES
v.
J. F. SHIPP. } No. 5. Original.

Information in contempt.

In the Supreme Court of the United States, October term, 1909.

Personally appeared before the undersigned, M. H. Doughty, to me known to be a reputable man and citizen, who on his oath states as follows:

On March 19, 1906, he was president of the board of aldermen of the city of Chattanooga, Tennessee, that on that night he attended a regular meeting of the board at the city hall. The meeting adjourned between nine and ten o'clock that night. On his way home he passed through the Stag Hotel, situated on Market street, where there is conducted a hotel, barroom, and pool room. Affiant arrived there some time before ten o'clock. When he was there a man named Frank Selcer, who was one of Sheriff Shipp's deputies, came up to where he was standing and accosted him thus: "I am mighty glad to meet you here, for there is something going on a few blocks away from here, and I want to be able to prove by you where I was." Affiant did not then comprehend his meaning, but he did afterwards. At the time that affiant was talking to Selcer he saw Henry Padgett, a defendant in this case, sitting in one of the chairs which are kept along the side of the building for guests to sit in. Affiant thought that Padgett was drunk and asleep. He left the Stag and went straight to his home, arriving there about ten o'clock, or a little before. When he got to his house he heard the noise, turmoil, and shooting which took place at the lynching of Ed Johnson, from the county bridge across the river. Affiant is well acquainted with
9 defendant Henry Padgett, who is rather a striking and peculiar looking man. He has white hair and fair skin and is very much like an Albino, and affiant has known him so long and so well that it is impossible for him to be mistaken about seeing him that night at the Stag. When affiant heard the noise, turmoil, and shooting which attended the lynching he then thought about Selcers' remarks to him at the Stag, and thought he comprehended his meaning.

After the return of Padgett's lawyer from Washington in June of this year, affiant told him what he knew about the case, as shown in this affidavit, and, so far as affiant knows, neither Padgett nor his lawyer had heard anything about the matter stated in this affidavit until the time when affiant told the lawyer as above herein set out.

M. H. DOUGHTY.

Subscribed and sworn to before me this 24 day of July, 1909.
My commission as notary public expires March 21, 1912.

[SEAL.] ELLIOTT M. BUCHANAN,
Notary Public.

10 (Indorsement:) Supreme Court United States, October term, 1909.—Term No. 4, Original.—The United States of America, complainant, *v.* J. F. Shipp et al.—Petition of Henry Padgett for rehearing.—Received Sept. 30, 1909.

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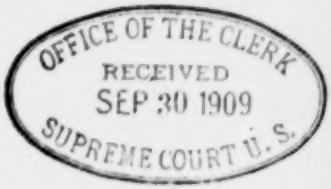

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 4, Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP ET AL.

PETITION FOR REHEARING ON BEHALF OF DEFENDANT NICK NOLAN.

SHEPHERD, FLEMING & SHEPHERD,
Attorneys for Nick Nolan.

LEWIS SHEPHERD,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 4, Original.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP ET ALS., DEFENDANTS.

INFORMATION IN CONTEMPT.

PETITION FOR REHEARING ON BEHALF OF THE DEFENDANT NICK NOLAN.

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Your petitioner, Nick Nolan, now and at all times asserting his innocence of participating in the work of the mob which lynched Ed Johnson in Chattanooga, Tennesse, March 19, 1906, comes and presents this his petition for a rehearing, as to him, of the above case, and for a reconsideration of the case and reversal of the judgment rendered

against him, making the rule to show cause why he should not be punished for contempt absolute.

The opinion of the majority of the court, rendered May 24, 1909, contents itself with the statement, "As to Williams and Mayes, there is direct testimony of their participation in the lynching and we do not thing that the evidence relied on to weaken that conclusion is sufficient to do so." The opinion does not set out the testimony relied on to show petitioner's guilt.

Petitioner respectfully asks the court to review the evidence in the record, and it is respectfully submitted that if the ordinary rule of preponderance in evidence in civil cases were applied to this case, the judgment of the court would be that the information be discharged and dismissed as to petitioner. But petitioner is advised that this is a criminal contempt, and one of the petitioners was guilty of the facts alleged, fraught with most grave and serious consequences, and that the court, before convicting the petitioner, should require a quantity and quality of proof satisfying the mind of the court to a high degree of certainty. Even if the court should not require evidence of a character sufficient to remove all reasonable doubt of guilt, still it is insisted that it should require strong and convincing proof before inflicting punishment on the petitioner. A citizen should not be denied or deprived of his liberty except upon the strongest and most convincing proof of guilt.

The case for the Government rests entirely on the testimony of A. J. Ware, and on the justice of the peace, and Deputy Sheriff Jerry Gibson, and ex-Constable Joe Franklin. A. J. Ware is relied on as the main witness for the Government, and in order to show how far it falls short of the kind of evidence the court ought to require before adjudging petitioner guilty, he sets out below every part of Mr. Ware's testimony relating to the petitioner.

Q. Did you recognize anybody else there, Squire?

A. Why, at that time I think I recognized, or thought I recognized, several people standing around.

Q. Who were they that you recognized?

A. It has been so long that I do not remember. I did not charge my memory with this and did not try to keep it in my mind.

Q. Give us your best recollection; endeavor to recollect who you saw there standing around and what they were doing.

A. Apparently the majority of them were doing just as I was—standing there.

Q. Did you see anybody put a noose around Johnson's neck?

A. I saw them when they tied the rope around his neck.

Q. Do you remember who did that?

A. No, sir.

Q. Did you see who did that?

A. Did I see the man?

Q. Yes.

A. I saw it when it was being done.

Q. Did you recognize the man?

A. No, I can not say that I did.

Q. Did you think you recognized him at that time?

A. Well, I thought I knew, but I would not be sure.

Q. Who was that?

A. Do you want facts or just my ideas about it?

Q. You know whether you recognized him or not, of course.

A. I say I thought I did, but I will not say I did. I would not make affidavit that I knew him.

Q. How long had you known the man you thought you recognized?

A. I have known him quite awhile.

Q. How well have you known him?

A. Not so well—not enough to recognize him and know him in the dark.

Q. Well, you are the one who has to do the swearing. You are the witness. Did you recognize the man there?

A. I say I do not know him well enough to recognize him and know him in the dark. I thought that I did.

Q. Who was it? What is your best impression as to the man who put the noose around Johnson's neck?

A. I thought I recognized one of the parties as Nick Nolan.

Q. One of the parties that was putting the noose around his neck?

A. That had hold of the rope.

Q. What does Nick Nolan do?

A. I think he runs a bar.

Q. How long have you known him?

A. I have known him for some time.

Q. Did you recognize anybody else besides Pool, and the one you thought you recognized as Nolan?

A. I could not say that I recognized anybody that had hold of the negro at all.

Q. Did you see anybody fire any bullets into him?

A. Yes, I saw some men shoot him.

Q. Who was that?

A. I don't know who it was.

Q. Who did you recognize as the man?

A. I thought it was Luther Williams.

Q. How long have you known Luther Williams?

A. I have known him some four or five years.

Q. How often do you see him?

A. Not often.

Q. How close were you to these men when this was happening?

A. When the shooting began I got back out of the way.

Q. How close were you when the noose was being put around his neck?

A. I was as close to him as that table (indicating).

Q. When this man that you thought was Luther Williams was shooting, how close were you to him?

A. I was probably as far as from here to the radiator over there.

Q. Which way were you?

A. I was back behind, toward the city.

Q. How far are you from the radiator now, in your judgment? How far is that in feet?

A. It is about 22 or 23 feet.

Q. 22 or 23 feet. Did you recognize anybody else that night, Squire? Did you see anybody help to put the noose around his neck with the man that you thought was Nolan?

A. I do not know that I recognized any one positively. I do not know that I can remember now of any one else that I even thought I knew.

Q. Make your best effort to recollect and see if you can recollect anybody else that you recognized there that night—anybody else that was shooting or helping with the noose or helping to bring him out from the jail.

A. I did not recognize any one coming out of the jail. I thought I recognized one; that was all.

Q. The man you have already spoken of?

A. Yes.

By Mr. SHEPHERD:

Q. Mr. Ware, I understood you to say that you were not at all certain you recognized Mr. Nolan there?

A. I am not.

Q. Your acquaintance with Mr. Nolan was so slight that you were not able to recognize him there on the bridge in the dark that night?

A. That is right.

Q. That is correct?

A. Yes, sir.

Redirect examination by Mr. SANFORD:

Q. You knew all these men, though, at that time? You had known all these men before?

A. Oh, yes.

Q. And you thought at that time they were the men you have named?

A. Not any more than I think now. My opinion is as strong now as it was then.

Q. Your opinion is as strong now as it was then?

A. Yes; I do not know whether it was them or not.

Q. But you thought it was?

A. I thought it was.

Q. Was it, or not, your best impression at the time?

A. Well, I thought it so strongly that I am telling you I thought it was them. If I had not thought it was them at the time I would not say so now; but I would not make affidavit that it was Luther Williams, and neither would I that it was Nick Nolan, nor Sheeny Warner, because it was so dark that you could scarcely recognize a man.

Q. Except the one you saw in the lobby?

A. I walked up by the side of Mr. Pritchard, right against his shoulder, before I was sure it was Bob Pritchard, and I have known him since he was a boy.

Q. Somebody hit Mr. Pritchard that night, did they not?

A. Yes.

Q. Did you see the lick?

A. I did.

Q. Who hit him?

A. I don't know who he was. I caught the man by the shoulder that struck him.

Q. Do you know who it was?

A. I told you Mr. Nolan that I thought was standing there.

Q. Oh, I did not understand that. It was Mr. Nolan you thought that hit Mr. Pritchard?

A. Yes sir.

See printed record.

The above quotation from Ware's testimony shows that he was very uncertain as to the identity of Nolan. He refuses to testify as a fact that he saw and recognized Nolan on that night, and consequently his testimony is of little weight and of slight probative effect. In fact, his testimony, even if uncontradicted, would not establish Nolan's presence. The man Ware thought was Nolan was another man.

Chivington, a reporter, who was first introduced by the complainant, was within two or three feet of Pritchard when he was struck (596).

Chivington was well acquainted with Nolan (910). He saw the man that hit Pritchard, and that man was not Nick Nolan (596). He saw the man's face and knows that it was not Nolan (Original Record, 910-917; Printed Record, 596-532-599-597).

Pemberton, deputy circuit court clerk, saw the man that hit Pritchard. He says that he did not see the man's face, but from his size and general appearance he don't think he was Nolan. He described the man as a much larger man than Nolan (Original Record, 920; Printed Record, 600-60).

So we have Ware's uncertain identification, offset by a positive statement of one witness, that Ware is mistaken, and by a statement of another witness more positive and certain than Ware.

Gibson, the night jailer, testified that he thought one of the masked men was Nick Nolan.

A. Well, I thought I knowed Nick Nolan. The man that I thought was Nolan had a mask over his face.

Q. That was Nick Nolan, that you thought was Nolan, the defendant in this case I mean.

A. I don't know whether it was him or his brother, it looked very much like him (2023).

Q. How did you recognize him?

A. It was more by the size of the man.

Q. And what else.

A. And his face was not visible to me. More by the size of the man I took it to be him (2025).

Some man was called "Nick" in the crowd and this helped witness to think he recognized Nolan (2025).

Q. State whether or not if it had not been for some one in that party used the name "Nick" you would have supposed it was Nick Nolan.

A. That was the name that made me incline to think so.

* * * * * * *

A. I just heard somebody say "Nick" (2052).

On cross-examination witness stated that he did not "mean to say positively that I recognized him." On being asked if witness identified defendant as the man he recognized at the jail, witness stated "The man that I thought was Nolan was a smaller man, apparently. If he could stand up, I could tell more about it."

"(The defendant Nick Nolan stood up as requested.)"

"WITNESS: He was a lower man it seemed to me."

* * * * * * *

A. Well the man I recognized and according to my judgment I thought was Nolan, was a smaller man than this one (2050-2051).

A. No I don't recognize him as the man (2052).

Gibson was a witness before the Hamilton County grand jury shortly after the lynching, and testified that he did not recognize any member of the mob (2054-2057).

Witness thought that one of the Nolans was in the mob (2055-2057).

A. "There was a small man there and I just got it in my head some way that it was Nolan and I heard 'Nick' called in the crowd" (2058).

The testimony of this witness is uncertain as to Nolan. It could not be otherwise in view of the fact that the man was masked. His recognition so far as it went was by the size and appearance, and when defendant stood before the witness at the hearing he refused to say he was the man, and stated further that the man he recognized was a smaller man than defendant. About all Gibson's testimony amounts to is that he thought one of the Nolan boys was in the crowd. This certainly cannot be sufficient evidence to condemn the defendant, even though there was no contradictory testimony.

Then, again, Ware and Gibson don't agree as to which man was Nolan. Gibson says his Nolan had a mask, while Ware's Nolan was without a mask. Gibson's Nolan was a small man, while Ware's Nolan was larger.

Joe Franklin, colored, testified that he saw Nick Nolan at the jail on the night of the lynching.

Through all the testimony there is carried a distinction between the mob and the spectators; the "first crowd" was the mob and the "second" or "back crowd" was made up of spectators. Franklin says that the man he recognized as Nolan was in the back crowd and not with the mob (650). The witness is involved in contradiction on nearly every part of his testimony, and this to such extent by credible witnesses that his testimony can have but little, if any, weight. It would seem that Franklin's was a different man from either Ware's or Gibson's, for the other Nolans were actively engaged in the mob, while Franklin's Nolan was a peaceable onlooker.

Franklin says he was in the northwest gate of the courthouse yard (529) when the mob passed up Walnut street (530). Pemberton says he came out by this gate and Franklin was not there (919); there was no one on the steps or in the gate (919). The gate is about 6 or 7 feet wide (931). It would have been impossible for a man to pass out of this gate without seeing another man sitting in the gateway.

H. P. Fry, a lawyer, testified that Franklin told him on the day after the lynching that he, Franklin, was not at the jail that night; "that he started towards the jail, and concluded it was not safe place for a nigger, and left" (746). This conversation occurred on the afternoon of the day following the lynching, when the subject was fresh and under general discussion (746).

Without pointing out in detail, the entire testimony of the witness exhibits a great amount of prejudice against the defendants. His willingness to testify against the defendants, his reluctance on the other side, and his general demeanor on cross-examination shows that he regarded the issue as one between the whites and the blacks, and he was decidedly in favor of the blacks.

Franklin's record is not at all good. He has been indicted several times in the courts of Hamilton county, Tennessee (537-546-548), and in one case admitted guilt of defrauding the county by collecting illegal fees (542).

The testimony of this witness stands by itself. There is no corroboration by Gibson and Ware, for the reasons that evidently each is attempting to identify a different man. So we have Franklin standing alone with strong contradictions in almost every particular. His statements as to what happened at the jail are denied by the sheriff and the deputies; his statement that he was in the court-house-yard gate is flatly denied by Pemberton, and he has himself stated that he was not at or about the jail on that night. With this unfavorable condition is Franklin's testimony to be taken as conclusive of Nolan's presence in the face of the positive evidence of Nolan's witnesses detailing his whereabouts on that night?

Under a fair construction of all the evidence, the Government has failed to show Nolan's participation in the mob. His alibi is well supported by competent proof, and his defense is sustained by the great weight of the evidence.

This is a fair statement of all the evidence, and it is respectfully insisted that it is insufficient to warrant a conviction in this case.

Petitioner respectfully prays the honorable court to rehear the case and review the evidence and discharge the rule for contempt against him, and as in duty bound he will ever pray.

SHEPHERD, FLEMING & SHEPHERD,
Attorneys for Petitioner.

LEWIS SHEPHERD,
Of Counsel.

Counsel for petitioner respectfully certify that the foregoing petition is not interposed for delay, and they further certify that they believe said petition is well founded in law.

SHEPHERD, FLEMING & SHEPHERD,
Attorneys for Petitioner.

LEWIS SHEPHERD,
Of Counsel.

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OCT 7 1909
SUPREME COURT U. S.

No. 4. Original.

SUPREME COURT OF THE [illegible]NITED STATES.

OCTOBER TERM, [illegible].

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP ET AL.

PETITION FOR REHEARING ON BEHALF OF THE DEFENDANT, WILLIAM MAYES.

LEWIS SHEPHERD,
Solicitor for William Mayes.

1 IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
JOSEPH F. SHIPP, ET AL., DEFENDANTS.
No. 5. Original.

INFORMATION IN CONTEMPT.

PETITION FOR REHEARING ON BEHALF OF THE DEFENDANT, WILLIAM MAYES.

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of United States:

Your petitioner, William Mayes, one of the defendants in this case, is greatly aggrieved by the judgment of this honorable court finding him guilty of the contempt charged against him in the information filed by the United States against Joseph F. Shipp and others, and making the rule absolute as to him, and he now comes and presents this petition, respectfully asking the court to rehear and reconsider the case as to him, and to discharge the rule for contempt issued against him.

(1.)

Your petitioner affirming in his answer that he was not guilty of participating in or aiding the mob which lynched Ed Johnson, respectfully reminds the court that he was convicted solely on the testimony of John N. Stonecipher, a witness for the complainant, who testified as to certain statements or declarations and confessions alleged to have been made by petitioner, touching the lynching
2 of Ed Johnson at Chattanooga, Tennessee, March 19, 1906.

Stonecipher testified that on the afternoon before Johnson was lynched he met up with petitioner and Henry Padgett, another defendant, and that Padgett asked him "if he had heard what the Supreme Court had done in the Johnson case," to which Stonecipher replied, "I told him that I understood that they had postponed the execution," and petitioner remarked, "Yes, that is what he understood, and it was a damned outrage." Then petitioner said, "They had no business interfering with our business." That is about all Padgett said. Then petitioner Mayes said, "We will see to that ourselves." This remark to Stonecipher was made, as alleged, in the presence of the defendant Padgett.

(Printed record, pp. 311–12.)

Stonecipher further testified that on the morning of March 20th, after the lynching, he went into Ransom's saloon, and saw Padgett; that he had a copy of the Chattanooga Times, and the first thing he said was, "This damned paper has printed a lie about this lynching." Stonecipher said, "How do you known it is a lie, Henry?" In reply to the question, "What did he answer?" Stonecipher said, "Well, he told me that he was there."

The only evidence against petitioner was that in company with Padgett the afternoon before the lynching he made the remark, referring to the action of the Supreme Court in the Johnson case, "We will see to that ourselves" (record, 312), and that on the morning after the lynching Stonecipher met him in front of the Stag saloon, and in answer to the inquiry, "Hello, Bill, what is the matter with your nose?" he said, "I skinned it last night breaking that damned jail door down in getting the nigger out." These statements are denied both by petitioner and Padgett. Stonecipher was successfully impeached by witnesses who testified as to his general bad character, and was not restored to favor by the effort to prove for him a good character. Moreover, it is shown in the testimony of
3 Alf. Handman that this man Stonecipher testified falsely in relation to the conversation between Padgett and Handman which he said occurred in Ransom's saloon.

(See original record, p. 643 et seq.; printed record, 1176.)

The petitioner proved by members of his family that he was at his home while the lynching was in progress.

It is respectfully insisted that the court before convicting petitioner should have required either proof beyond a reasonable doubt or proof of such cogent character as to be convincing of his guilt. The declaration of petitioner, made before the lynching, even if he made it, which is extremely doubtful, was not sufficient to show participation in the work of the mob. The remark that he made on the street to Stonecipher, if he made such remark, was an idle, flippant statement. It does not rise to the dignity of a deliberate confession, and is entitled to very little if any probative force. The liberty of the citizen indeed hangs by a slender thread if he may be deprived of it on such slight evidence as this, coming from a man who is himself shown to be a bad man, devoid of reputation.

Petitioner respectfully prays this honorable court to rehear its former decision and apply the rule that the case must not be decided on a mere preponderance of evidence as in a civil case, but by convincing and cogent evidence, such as is required in criminal cases, and as in duty bound they will ever pray.

LEWIS SHEPHERD,
Attorney for Petitioner.

Counsel for petitioner respectfully certify that the foregoing petition is not interposed for delay, and they further certify that they believe said petition to be well founded in law.

4 I, William Mayes, the petitioner in the foregoing petition, make oath that, owing to my poverty I am unable to bear the expense of printing the petition, and I respectfully pray this honorable court to hear and consider this petition on the original typewritten draft of the petition instead of on the printed copy.

W. J. MAYES.

Subscribed and sworn to before me this the 4th day of October, 1909.

[SEAL.]

WM. C. SHEPHERD,
Notary Public.

(Stamped:) Office of the clerk, Supreme Court U. S. Received Oct. 7, 1909.

(Indorsement on cover:) Supreme Court U. S. October term, 1909. Term No. 4, Original. The United States of America, complainant, vs. J. F. Shipp et al. Petition of William Mayes for rehearing. Received Oct. 7, 1909.

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OCT 11 1909
SUPREME COURT U.S.

No. 4 Original

In the Supreme Court of the United States

OCTOBER TERM, 1909.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP, ET AL.

PETITION OF DEFENDANTS, JOSEPH F. SHIPP AND JERIMIAH GIBSON, FOR RE-HEARING.

M. H. CLIFT,
Attorney for Defendants Shipp and Gibson.

JUDSON HARMON,
ROBERT PRITCHARD,
WILLIAM D. SPEARS,
ROBERT B. COOKE,
JAMES J. LYNCH,
Associate Counsel.

MAC GOWAN-COOKE PRINTING CO., CHATTANOOGA, TENN.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, complainant, vs. JOSEPH F. SHIPP, ET AL. } No. 5, Original.

PETITION OF DEFENDANTS, JOSEPH F. SHIPP AND JERIMIAH GIBSON:

Your petitioners, Joseph F. Shipp and Jerimiah Gibson, respectfully show unto the Honorable Court that they on the — day of ————, 1909, filed their motion for a re-hearing in the above stated cause, setting out, among other reasons, why a new trial should be granted:

I.

That the Honorable Court erred in its holding that defendants had not been purged of the alleged contempt charged against them and subjecting them to punishment for an alleged criminal contempt, thus depriving them of their liberties and right of trial by jury as provided for in criminal offences, contrary to the law of the land and the right guaranteed to American citizens.

II.

Because, as petitioners respectfully insist, the majority of the Court erred in treating the case as a Civil instead of a Criminal contempt, as if a contempt was committed by them it was criminal and not Civil, and they respectfully insist that under the record as presented in this cause the Court erred in holding that a contempt had been committed by them:

First: Because defendants by their answer deny intent to commit a contempt of the Honorable Court and the weight and preponderance of the evidence, as presented in the record, sustains defendants' answer and does not authorize or justify the conclusion or establish the guilt of defendants.

Second: Because there is no material competent or at least not sufficient competent evidence of the character required in criminal cases presented in the record as petitioners respectfully insist, to justify the conclusion of the majority of the Court in finding them guilty of contempt.

Third: Because the majority of the Court in its opinion holding defendants guilty of a criminal contempt failed to give them the benefit of the presumption of innocence to which they are entitled under the laws when applied to criminal offences. It failed to give them the benefit of a reasonable doubt which applies in this country to all trials of a criminal nature. The Court in effect adopted the rule which

requires defendants to establish their innocence, contrary to the laws and rules heretofore adhered to in this country.

III.

Because the majority of the Court erred in holding defendants guilty of contempt along lines and on matters not set out in the information, which constituted the charges against defendants and against which they had no opportunity to defend. "In this the information alleges a conspiracy between defendants and other persons to lynch and murder one Ed Johnson with the intent to show their contempt and disregard for this Honorable Court, etc." Whereas, there is no evidence, or at least there is no competent or sufficient evidence, of a competent nature to sustain this charge. The substantive, in fact the only specific charge set forth in the information on which the charge of conspiracy was founded and the charge of contempt based was that the defendant Shipp had removed the guards from the jail in order to facilitate or make more easy the work of said mob. These charges are denied by defendant, and as we respectfully insist, the evidence wholly fails to sustain them or any of the charges against these defendants.

IV.

Because the Court erred in not taking into consideration the disavowal of any intention on the part of defendants to

commit a contempt of this Honorable Court and their denial that they intentionally or knowingly committed any contempt of this Honorable Court, and therefore, in failing to discharge them, as without this intent on their part entering into their acts it should not be said there was an offense.

V.

Petitioners further show and insist, with all due respect to the Court, that it erred in holding these defendants guilty of contempt of the Honorable Court:

First: For the further reason that the information upon which the charge is based charges that the defendant Shipp was at the time of the alleged contempt the Sheriff of Hamilton County, in the State of Tennessee, (an executive officer of the State of Tennessee for said County) and that as such Sheriff was the legal custodian, under the Laws of Tennessee, of all persons duly committed in said County under the law of said State to confinement and imprisonment within said jail; "*that the said Ed Johnson was then and there a prisoner, confined and restrained of his liberty in the said jail, and in the lawful custody, and control of said sheriff, and said deputy sheriffs under commitment duly issued out of the criminal court of said Hamilton County.*"

Second: The petitioners further show unto the Honorable Court that the information as above set forth shows that it was under this commitment, duly issued out of the

Criminal Court of said Hamilton County, that said Ed Johnson was held as a prisoner at the time he was lynched and that there is no allegation in the information charging that he was a prisoner of the United States or in the custody of the United States and that notwithstanding this fact yet the record in this cause as they respectfully insist shows that your petitioners, Shipp and Gibson, did all in their power to protect said Ed Johnson from the mob or mob violence. That they exercised their best judgment from the facts known or communicated to them in the protection of prisoners, including said Johnson, at all times, as is shown in the record in this cause.

Third: That having exercised their best judgment and there being no evidence in the record that any threat or expected mob violence would take place on that night, or at the time it occurred having been communicated to them, and they having denied all the charges of the information in regard to these matters and having denied any intention to commit any contempt of the order of this Honorable Court, and having, as executive officers of the State of Tennessee, exercised their best judgment on the information they had in the premises, they are not and should not be held guilty of contempt of this Honorable Court. Especially so as under the proof in this record it is shown that the defendants and especially defendant Shipp used extraordinary care in his efforts to protect the prisoner Johnson as well as

all prisoners committed to his custody from mob violence or danger.

VI.

Petitioners further respectfully, but earnestly, insist that this Honorable Court had no jurisdiction over the case of Ed Johnson, as he was rightly in custody by commitment of the State Court which had the exclusive jurisdiction and control of the case until the State Courts had exhausted their jurisdiction, and then only when a clear case is made out showing that some Federal question was raised in the State Courts and passed upon by said Courts, which was not done in the case at bar, as we insist is conclusively shown by the record, and then only by appeal or Writ of Error could the question be raised and the Court had no jurisdiction to try the questions involved in the Johnson case under a Writ of habeas corpus.

BRIEF AND ARGUMENT.

By reference to the information it will be seen that it charges that defendant Shipp was the Sheriff of Hamilton County, Tennessee, and as such had full charge and control of the County jail and was the legal custodian, under the *Laws of Tennessee, of all persons duly committed in said county under the laws of said State to confinement and imprisonment within said jail;* that Frank Jones, Matthew Galloway, C. A. Baker, T. B. Taylor, Fred Frawley,

George Brown, Jerimiah Gibson, Marion Perkins and Joseph Clark, and each of them were deputy sheriffs, and that each of them before the hour of six o'clock on the evening of the said 19th day of March, 1906, were advised and informed of the action of the Honorable Supreme Court of the United States, with respect to the appeal of the said Ed Johnson; *that the said Ed Johnson was then and there a prisoner, confined and restrained of his liberty, in the said County jail and in the lawful custody and control of said Sheriff and said Deputy Sheriffs under a commitment duly issued out of the criminal court of said Hamilton County.*

Thus it will be seen that the information charges that the prisoner Johnson was held by the Sheriff under a commitment duly issued out of the criminal Court of Hamilton County and the record shows, as we respectfully insist, that the prisoner was never transferred as a prisoner of the United States, but was at all times held by the Sheriff under the commitment from the criminal court of Hamilton County; that no arrangement was ever made or entered into by the United States Government with the Sheriff to hold the prisoner as a prisoner of the United States.

It is further respectfully insisted on behalf of the defendants Shipp and Gibson that the allegation contained in said information that defendant Shipp and his deputies on the 19th of March, 1906, after having been advised of the

action of the Supreme Court of the United States, were informed or had every reason to believe from current reports and rumors conveyed to them, and each of them, that an attempt would be made on the evening of that day or the next morning by a mob composed of a large number of men to force an entrance and take from said jail said Ed Johnson and put him to death. *This allegation of said information we respectfully, but earnestly, insist has been fully refuted by the denial and answer of these defendants and by the testimony as set forth in this record, as has also the charge in said information that your defendant Shipp withdrew from said jail early in the evening of said day, the usual and customary guard and left in charge thereof only the night jailor, to-wit, defendant Gibson, and committed other acts and did other things evincing a purpose and disposition on the part of said Sheriff to render it less difficult and less dangerous for said mob to prosecute and carry into effect its unlawful design and purpose, to-wit, the lynching of said Ed Johnson. All these allegations are denied and they are not sustained by proof, as we respectfully insist, but on the contrary the proof establishes, as we respectfully insist, the negative of these charges and shows that there was no foundation for these allegations.*

That the allegation that defendants were informed and had every reason to believe, from current reports and rumors conveyed to them, that an attempt would be made on the

evening of the 19th of March or early in the morning of the following day to force an entrance into said jail and take Ed Johnson therefrom and put him to death, as also the charge that the usual and customary guard was removed for the purposes alleged in said information are not only denied by defendant, but disproven, as we respectfully insist, by the testimony of the witnesses examined in this cause.

First: L. G. Walker, witness for Government, is asked:

> "Had there been anything that afternoon (referring to the afternoon of March 19, 1906), to attract your attention, or anything unusual in the appearance of the streets to cause any apprehension on your part? Did you see any signs or indications of a mob or lynching?"
>
> A. "No, sir; none at all."
>
> (*Pr. Record*, 199.)

This witness is asked:

> "If there had been any noise there, anything unusual, you were in a position to have heard it, were you not?"
>
> A. "Oh, yes; I think so."
>
> (*Pr. Record*, 200.)

John L. Chivington, witness on behalf of the United States, when asked as to the effect of habeas corpus proceedings and especially the notice that there had been an appeal prayed to Supreme Court had in reference to this feeling that you have testified about?"

> A. "I would not attempt to say what the general state of feeling was. There were hot-headed

people who made hot-headed remarks, but the conservative element was then as now taking a calm view of things."

Q. "What was the effect on the hot-headed element — the lawless element — of the appeal to the Supreme Court?"

A. "*I believe that the general feeling in Chatatnooga was one of a great deal more of disappointment than of excitement.*"

(*Pr. Record*, 216.)

This witness says he went to the jail between 8:30 and 9 o'clock. He saw Sheriff Shipp. He passed in front of him as he got to the jail.

(*Pr. Record*, 217.)

There was no one with Sheriff Shipp. Does not know that the Sheriff saw him at all.

(*Pr. Record*, 217.)

Q. "Did you hear the Sheriff call on anybody to aid him?"

A. "He didn't call on me. I think I was the only outsider (meaning that he was the only person there, as we insist, outside the mob.")

(*Pr. Record*, 220.)

When asked:

"Where was Sheriff Shipp in the meantime?"

A. "When the Sheriff was first taken up he was forced into a little room. He tried to persuade the mob to leave."

(*Pr. Record*, 222.)

This witness worked for "*The Times*." They posted

bulletins. Did not see any crowd around the bulletin.

(*Pr. Record*, 227.)

Q. "*Was it the mob that shot him or some of these bystanders that you have referred to?*"

A. "*It was people further towards the South end of the bridge.*"

Q. "*From among the bystanders as you observed at the time?*"

A. "*Yes, sir; I presume it was from among the bystanders. I should say there was several hundred shots. The firing continued until the rope broke and the negro fell.*"

Q. "While this immense fusillade was going on, and until after the negro had been killed, had a shot been fired by these men that you call the mob?"

A. "No, sir; not a shot."

Q. "*The man was killed by the shooting from these gentlemen Mr. Sanford has referred to, was he?*"

A. "*Yes, sir; that is a fact.*"

Witness said when Sheriff Shipp came he was moving rapidly. He shoved the men aside. He never stopped until he got inside the door. He was carried upstairs. *Four or five men seized him and carried him up. He asked the mob several times to disperse.*

(*Pr. Record*, 232-233.)

This witness says:

"The mob was absolutely silent except when it would come to the matter of directing how something should be done, and one man did most of the

talking. His orders were obeyed. There wasn't any noise made by the mob except what they made in breaking down the door. It was perfectly quiet except the blows they struck." Never heard of a prisoner escaping from the jail or being mobbed there during Sheriff Shipp's administration when Gibson was jailor.

(*Pr. Record*, 233.)

Witness, when asked to state what in his (Sheriff Shipp's) manner or in his action indicated to him that he (Sheriff Shipp) was about to draw a pistol, answered:

A. "*That occurred right at the door. One of the mob said to him they were there to get Ed Johnson, and they were going to get Ed Johnson.* He did not say it very mildly, and they were not there to hurt him; that they were not going to hurt the Sheriff. The Sheriff said: 'Yes, I know you are not going to hurt me.' *He said that in rather a determined tone, and as he did so, he moved his hand towards his hip, and I drew the conclusion from that that he was about to draw a weapon, when he was seized by the mob.*"

Q. "He was immediately seized, was he?"

A. "Yes, sir."

(*Pr. Record*, 234.)

The telephone to the jail had been cut off. Someone had broken the wire so it could not be used.

(*Pr. Record*, 234.)

Q. "In *The Chattanooga Times* of the 19th of March appeared an article headed 'Justice Harlan Allowed an Appeal to Ed Johnson.' Who wrote it?"

A. "I wrote it."

Witness says he went around the City during the day that this article was published, mingled with the people, and that the publication of this article on the morning of the 19th created no excitement that he saw or heard of.

Q. "*Did it arouse any mob spirit, or anything of the sort, so far as you were able to discover in your rounds?*"

A. "*No, sir; I did not hear anything about any mob all day.*"

Q. "*Ed Johnson was brought back from Knoxville on March 11, I believe you said?*"

A. "*Yes, sir; Sunday morning.*"

Q. "Had the excitement subsided after March 11th, or any demonstration of excitement?"

A. "There were no demonstrations after March 11th until March 19th."

Q. "Did you observe any demonstrations of excitement until the mob had assembled?"

A. "*No, sir; I knew nothing of it until I was told at the City hall that it was already there.*"

Q. "It was already there before you knew it?"

A. "Yes, sir."

Q. "And this case had been put especially in your charge?"

A. "Yes, sir."

Q. "And it was your business to observe and find out?"

A. "Yes, sir."

Q. "This girl that it is alleged Johnson raped — did she live in the City of Chattanooga?"

A. "No, sir; she lived out near the mountain. She lived beyond St. Elmo."

(*Pr. Record*, 237.)

Q. "And there was nothing in the atmosphere or in this tension you refer to to cause you to expect the mob would occur when it did occur?"

A. "No, sir; *I did not expect any mob on Monday night.*"

This is the Government's star witness, and it is seen how utterly it fails to establish the facts charged in the information, but on the contrary it is seen that his testimony disproves the charge.

John T. Evans, witness for Government, when asked by the Government attorney in regard to the interview that he had had with defendant Shipp, as follows:

Q. "Do you remember what he said with reference to what had caused that lynching?"

A. "Well, he said that the people of Chattanooga were perfectly willing to let the law take its course, and always had been, but that delay—"

Q. "What delay?"

A. "The delay in letting the law take its course, I suppose."

Q. "In what way? In any particular court?"

A. "I should judge, from what he said, in all courts."

Q. "Delay, in letting the law take its course, had done what?"

A. "*Was perhaps really at the bottom of the lynching.*"

(*Pr. Record*, 266.)

This is a statement of the fact as to the statements made by Sheriff Shipp in the alleged interview, published in *The Birmingham Age-Herald* of the next day, and the Court will note that this witness in testifying as to what the defendant Shipp said makes it quite different to the published interview. (Objection was made at the time to the introduction of this interview, which objection is found on page 267 of the printed record), and which objection, we respectfully insist, should have been sustained by the Court and this interview excluded. Especially so, as this witness shows in his testimony that he did not write down the interview at the time and that it was not a verbatim statement of what defendant Shipp said. He further shows that the defendant Shipp stated to him that he did not expect any trouble whatever that night.

(*Pr. Record*, 272.)

Rev. Dr. Howard L. Jones, witness in behalf of the Government, says he reached the jail after the prisoner had been taken out by the mob; that Capt. Shipp told him the prisoner had been taken and that he (Shipp) had been seized immediately when he went into the jail and had been unable to do anything.

(*Pr. Record*, 273-4.)

Carl J. Rowden, witness in behalf of the Government, lived in about twenty-five feet of the jail; was at home the night of the lynching.

(*Pr. Record*, 274-5.)

He (Rowden) sounded no alarm; did not call upon the public to interfere in the matter; did not order bell rung; saw no one there who showed the slightest inclination to help the prisoner or to interfere with the mob. Neither he or anyone else that he saw there made the slightest effort so far as he knew to go in and rescue the officers who were inside the jail.

(*Pr. Record*, 281-282.)

David R. Walker (colored), witness in behalf of the Government. The testimony of this witness does not touch or have any relevancy to the charges contained in the information, and relates principally to Thomas Taylor, who has been discharged.

(*Pr. Record*, 282-289.)

Julia Wofford (colored), says she was cooking for Capt. Shipp at the time of the lynching; that she heard Capt. Shipp one day at the dinner table say that if the execution would be stayed Ed Johnson would be mobbed. That at the time she heard Capt. Shipp make this remark at the dinner table Mr. and Mrs. Hardin and Mr. and Mrs. Myer and Mrs. Capt. Shipp were all present sitting at the table and heard the remark.

(*Pr. Record*, 294.)

She also says she told Mrs. J. B. F. Lowry of this conversation.

(*Pr. Record*, 292.)

This witness, Julia Wofford, is thoroughly and com-

pletely impeached, so much so as to render her testimony absolutely valueless by the following witnesses:

(W. A. Meyer, *Pr. Record*, 1015.)

(Mrs. W. A. Meyer, *Pr. Record*, 1016-17.)

(Mrs. Lille S. Hardin, *Pr. Record*, 1018-19.)

(Capt. J. F. Shipp, *Pr. Record*, 1105.)

J. T. Barnes, witness for Government, destroys his own testimony by his contradiction of himself, and shows that his statements cannot be relied upon. The newspaper article referred to by him is objected to and cannot be treated as evidence against anyone.

(*Pr. Record*, 340-348.)

He says while he expected a mob he can't give the name of anyone else who did, and that he did not report it to the police or anyone else and had nothing to base his expectation of a mob on.

Joseph R. Curtis, witness on behalf of the Government, went to the jail about 8:10 and when he got there didn't see anyone at all; went inside the office and started to the telephone. Two or three men came in in the meantime that he did not know. One of them asked him where he was going to telephone, and he said I better not or could not. He had a Winchester rifle in his hand, so I didn't go in.

(*Pr. Record*, 363.)

Capt. Shipp came in about 9 o'clock or a little after; did not see him until he was brought on the second floor. *Sev-*

eral members of the mob had him by that time and they brought him up to the second floor. He made a show of force, but was overpowered. He didn't fight them because there was too many of them. He resisted their efforts to hold him.

(*Pr. Record*, 366.)

The jail was full of men.

(*Pr. Record*, 367.)

The people there were in sympathy with the mob.

(*Pr. Record*, 371.)

T. S. Wilcox, witness on behalf of the United States, a plumber, chairman of the Board of Safety. This Board had control of the police. Public excitement had subsided. The lynching came as a great surprise to him. He was not looking for it nor expecting it.

(*Pr. Record*, 377.)

Wm. Walker, witness on behalf of the Government, says:

That he knew Capt. Shipp when he saw him, and that was the extent of his acquaintance with him. He came out electioneering. When he got to talking I told him I thought him running that negro out through Harriman to Nashville would cost him his election, or something like that. The negro at that time had not been lynched. *Shipp replied that after the negro fell into his hands he had to take care of him.*

(*Pr. Record*, 380-381.)

He (Walker) thought Johnson should be lynched and

he wanted to lynch him.

(*Pr. Record*, 383.)

Andy Ware, witness on behalf of the Government, says he did not believe the report when he first heard it, that the mob was attempting to lynch Johnson; that he was not expecting any lynching and the public was not expecting it. He was a Justice of the Peace at the time. Had an office on East Ninth Street, where great numbers of people congregated. He did not expect a lynching.

(*Pr. Record*, 397-398.)

Witness *did not communicate anything said by others to him. Did not believe it.*

(*Pr. Record*, 401.)

George B. David, witness on behalf of the Government, in answer to question by the Government, says "*He had not heard there would be a lynching.*"

(*Pr. Record*, 437.)

Joe Franklin, witness in behalf of the Government, says: "The usual guard at the jail, at nights, was just Mr. Gibson."

(*Pr. Record*, 444.)

The testimony of this witness applies principally to Bart. Justice, ———— Marquette, both of whom were discharged by the Court, and to Nick Nolan and Joe Clark; Joe Clark also discharged by the Court.

Witness Joe Franklin was, as the records show, indicted

for fraudulently obtaining money from Hamilton County. He admits his guilt by paying the money so charged to have been received by him.

(*Pr. Record*, 458-461-462.)

Then this witness not only impeaches himself and shows great prejudice in his testimony, but is impeached by other witnesses.

Dr. A. W. Boyd, witness for defendant, says he is acquainted with J. M. Stonecipher, witness for the Government; that he knows his general character; that it is bad; that he would not give him credit on his oath.

(*Pr. Record*, 500.)

Witness knows defendant J. F. Shipp and has for twenty years; are neighbors; his general reputation in every respect is good; he is a man on the side of law, peace and order.

(*Pr. Record*, 501.)

A. W. Boyd says *the excitement had absolutely abated before Johnson was lynched; that there was no thought in his mind of any danger to Johnson at the time he was lynched.*

(*Pr. Record*, 502.)

A. N. Sloan, witness for Alfred Handman, treasurer of the First Presbyterian church, has been Grand Master of the State of Tennessee; is well acquainted with defendant Shipp; has known him for years and years; knows his reputation; it is good. His reputation for peace and good order

and upholding law and order is good.

(*Pr. Record*, 560.)

Witness knew of the efforts put forth to protect Johnson by Shipp and his deputies.

(*Pr. Record*, 508.)

At the time the actual lynching took place the excitement had entirely subsided.

(*Pr. Record*, 508.)

He could not say that the effort to take his case up in the Federal court aroused excitement; it was more a sentiment of disgust. In answer to question by the Government's attorney, he says:

> "*As a reasonable man I knew of the Court proceedings, but I must say that I did not anticipate a lynching.*"

When asked "Did you not as a reasonable man think it would increase the excitement and revive the condition that had existed before under the circumstances?"

A. "*No;* I could hardly say that I did so."

(*Pr. Record*, 510.)

Henry P. Fry, witness for Bart Justice. This witness contradicts Joe Franklin as to his being at the court-house the night of the lynching by statement made by Franklin the next day to him (Fry.)

(*Pr. Record*, 553-554.)

Dr. Cooper Holtzclaw, witness in behalf of defendant Wm. Marquette, has known Capt. J. F. Shipp for twenty-

three years; knows the people with whom he associates, etc. He knows his general reputation in the community; it is excellent.

(*Pr. Record*, 571.)

Witness says it was not only the lawless element, but it was every element that wanted the--

Everybody else wanted a speedy execution of the case. He *did not consider that Johnson would be lynched on account of the delay.*

(*Pr. Record*, 574.)

Commencing on page 574 (*Pr. Record*) the testimony in reference to Wm. J. Mays is offered, ending page 595.

Testimony in behalf of Nick Nolan, commencing on 595 (*Pr. Record*), extending to 632.

Testimony on behalf of defendant Henry Padgett, commencing on 632 (*Pr. Record*), and ending on page 672.

Testimony on behalf of defendant Frank Ward, commencing on page 675 (*Pr. Record*), to 718.

Testimony in behalf of defendant Luther Williams, beginning on page 718 (*Pr. Record*), to page 750.

Testimony on behalf of defendant Frank Jones, beginning on page 750 (*Pr. Record.*) This witness in answer to the questions propounded by the Government:

> Q. "If you had known there had been a delay and you had known the Supreme Court had made an order that was going to delay the case, from what you knew of the lawless element in town at that time. would you not have been afraid there was going to

be an attempt to lynch him — if you had known about the order of the Supreme Court?"

A. *"No, sir; I would not take it that way. Everything was perfectly quiet."*

(*Pr. Record*, 757)

Copy of record of criminal circuit court for Hamilton County in case of the State vs. Ed. Johnson, No. 23689, charge rape (*Record* 765-766.)

Witness Jones *never guarded the jail of Hamilton County after the conviction and removal of Ed. Johnson to Knoxville; never knew of anyone else who did, or of any necessity of so doing. The lynching was a very great surprise to him. He had not heard of any talk of lynching.*

(*Pr. Record*, 766-767.)

Azariah Shelton, witness on behalf of defendant Frank Jones, says: He is acquainted with defendant Frank Jones and has known him every since he was born; that they have never lived more than four miles apart; knows his general reputation; it is good; would give him full faith and credit on his oath.

(*Pr. Record*, 768-769.)

J. P. Webb, Justice of the Peace, says he knows Jones and his reputation is good and that he is entitled to full faith and credit on his oath.

H. D. Huffaker has held the position of County Superintendent of Schools and County Trustee. He says he knows Frank Jones; that his character is good; that he is entitled to full faith and credit on his oath.

Additional testimony on behalf of defendant Luther Williams:

Witness T. G. Newman says he has held the office of constable; knows Williams; that his general reputation is good and that he is entitled to full faith and credit on his oath.

(*Pr. Record*, 775.)

Robt. E. Pritchard, on behalf of Nolan.

(*Pr. Record*, 779.)

Oscar Yarnell, witness in behalf of George Brown. Mr. Yarnell is asked the following questions:

> Q. "Now, after the time that the attempt was made to lynch Johnson, I will ask you to state whether or not there was anything to your knowledge to indicate or to cause you or any other citizen with whom you mixed to suspect or believe, or if you had any information of any character whatever, that there was any danger of a lynching of Ed. Johnson?"
>
> A. "Well, Mr. Pritchard, *I never heard of any. I never heard of any threats to lynch him, and I did not regard the situation as at all dangerous.*"
>
> Q. "Did you know of any fact that would lead you to suspect or believe that he was about to be lynched?"
>
> A. "*No, sir; I did not. Public sentiment seemed to be quieted.*"

(*Pr. Record*, 787.)

Nothing had occurred to lead witness to suspect that a lynching might occur that night, nor was there anything in the public demeanor or public conduct, or public conversa-

tion that informed him or would lead him to believe there was about to be a lynching.

(*Pr. Record*, 787.)

Dr. M. J. Lewis, witness on behalf of defendants, *didn't hear any talk or apprehension of mob violence on the day of the lynching, or anything about it at all, about that time. There was no apprehension of mob violence at that time. He knew of none anywhere at the time.*

(*Pr. Record*, 794.)

O. G. Stone, witness for defendants, says some time before the lynching of Johnson there was quite an excitement here. "*I guess it was a month before; but the excitement had died down at the time of the lynching.*" Did not think it would occur; heard no discussion of any impending mob or any apprehension of mob violence right before the occurrence. Did not hear any discussion on that day about the question at all. The publication of the order of the Supreme Court of the United States caused no apprehension on his part of a mob, nor had he heard anybody else talk about it within a few days before.

(*Pr. Record*, 802.)

Witness was at a meeting of the Lodge of Odd Fellows at the corner of Eighth and Market Streets. About fifty persons were present on the night the lynching took place. There was no discussion or any intimation of any lynching at that meeting.

(*Pr. Record*, 805.)

Charles W. Watson, witness for defendants, a member of the County Court of Hamilton and a Justice of the Peace, proves the good character of Marion Perkins, C. A. Baker and Matt Galloway and that they are entitled to full faith and credit on their oath.

(*Pr. Record*, 814-816-817.)

J. J. Bork, witness for defendants, proves the good character of Galloway and Perkins and that they are entitled to full faith and credit on their oath.

(*Pr. Record*, 818-819.)

R. A. Williams, witness for defendants, proves the good character of C. A. Baker and that he is entitled to full faith and credit on his oath.

(*Pr. Record*, 821.)

This witness also testifies as to the conduct of Capt. Shipp in his efforts to protect Johnson from lynching.

(*Pr. Record*, 822-823.)

George W. Edwards, witness on behalf of defendants, also proves the good character of Baker and that he is entitled to full faith and credit on his oath.

(*Pr. Record*, 825-826.)

David W. Lamon, a Justice of the Peace, witness for defendants, proves the good character of Marion Perkins.

(*Pr. Record*, 827-828.)

Marion Perkins, witness on behalf of defendants, never heard or knew anything during the time Johnson was here.

after he was brought back from Knoxville, for the ten days previous to the lynching, that would create in his mind an impression that Johnson was in danger or that any extra precaution ought to be taken for his safety.

(*Pr. Record*, 833-4.)

In his travels about the city he was brought in contact with the criminal class, as well as other element of society; that he never heard from the lawless element or any other element, any threats of lynching Ed. Johnson, or any talk that there was any such impression as that prevailing in the community previous to the lynching. The lynching of Johnson came to him as a very great surprise.

(*Pr. Record*, 834.)

M. N. Whittaker, witness on behalf of defendants, is attorney-general for the Sixth Judicial Circuit of Tennessee, which embraces Hamilton County and the City of Chattanooga; had been attorney-general five years. S. D. McReynolds was judge of the criminal court at the time Ed. Johnson was tried; heard a conversation between Capt. Shipp and the attorneys of Ed. Johnson. Capt. Shipp was very anxious, as well as the Judge and himself (Whittaker) that no mistake be made as to whether he was the man that committed the outrage, so he put opposing counsel in possession of all the facts he knew.

(*Pr. Record*, 841-2.)

Witness detailed the efforts on behalf of Capt. Shipp to

protect the negro and his success in doing so when first arrested and on up to the lynching.

(*Pr. Record*, 842-846.)

This witness did not observe any excitement either when Judge Clark stayed proceedings for ten days or when the appeal was granted, or first order by Judge Harlan was issued.

(*Pr. Record*, 847.)

There was nothing occurred in connection with said proceeding that, at that time, caused him or would have caused in his judgment, a reasonably prudent person to apprehend mob violence to Ed. Johnson, or that should have caused Capt. Shipp, the sheriff, or any other reasonable person to apprehend mob violence. He heard nothing or any suggestion of such a thing.

(*Pr. Record*, 847.)

This witness when asked if in his judgment the taking of jurisdiction by the Federal Court was a thing that would be liable to create a feeling or desire to mob the prisoner, or whether it would add to his security, said:

> A. "On account of the great respect of the people for the Federal Government, he would have thought that the action of the Supreme Court in this case would have guaranteed greater safety to the prisoner. That is my opinion."

(*Pr. Record*, 848.)

Witness says when he reached the jail the night of the lynching that Capt. Shipp had a gun in his hand, and Mr

Gibson was so excited that the perspiration was rolling off of him in great beads; says that Capt. Shipp was excited and that he himself was excited when he saw what had happened. That when he reached the jail it would have been idle and silly to try to intercept that mob under the conditions that then prevailed.

(*Pr. Record*, 852-3.)

Witness has known Capt. Shipp for fifteen or twenty years; knows his general character; *it is just as good as any man's can be, and his character for peace and good order is perfect* and would give him full faith and credit on his oath.

(*Pr. Record*, 854.)

Ira M. Boswell, pastor of Walnut Street Christian Church, Chattanooga, and a member of the Pastors' Association or Union meeting; preaches about twice a week in the shops in Chattanooga.

(*Pr. Record*, 867.)

Witness says public sentiment against Johnson, which tended toward violence, subsided before the trial was over. He never dreamed there was anything like a lynching that would take place; no one else mentioned it; no reference was made to Ed. Johnson or to the trial in any way whatever.

(*Pr. Record*, 870.)

The people have more respect for the Federal Court than the State Court. Witness is acquainted with the general

character of Shipp and it is good and he is entitled to full faith and credit on his oath.

(*Pr. Record*, 870-71.)

Judge Clark, Judge of the United States District Court for the Middle and Eastern Districts of Tennessee, testified that he had lived in Chattanooga continuously from 1883. He heard Ed. Johnson's application for writ of *habeas corpus*, denied the same and granted the ten days' stay of execution. He was asked:

> Q. "*Judge, did anything occur at that time; was anything said at the trial on the part of the representatives of the State, or on the part of anyone, that caused you to apprehend any mob violence to this man?*"
>
> A. "*Not in the least.*"
>
> Q. "I will ask you after you returned to Chattanooga, *after Judge Harlan granted this order, and after the appeal was granted by the Supreme Court, if that order of the United States Supreme Court and of Judge Harlan caused you to apprehend any mob violence?*"
>
> A. "*No, sir; it did not.* I will tell you what did occur. On account of the decidedly emphatic charge in the petition and some statements that were made on the trial by certain witnesses to the effect that the attorneys for the defense had been to an extent intimidated in making the defense for fear the colored man would be lynched if they interposed the defense — this went mainly to the jury question and how it was made up — *I asked my secretary on the day that I was here, on Monday, on my way to St. Augustine, if he had heard of any suggestion*

or hint of any violence or dissatisfaction with the situation; and he told me he had not."

Q. "I will ask you, Judge, if you had apprehended danger to the man, or if application had been made to you, if you would not have ordered *his removal to some other jail?*"

A. "*If it had appeared that the prisoner was in real or great danger — if that had appeared to me — I am quite sure I would have made the order of my own motion.* I would have called up his attorney and suggested that he make the application for his removal. I am telling you now how I think I would have acted in such a situation as that."

Judge Clark says: "I never heard the remotest suggestion, and I did not think the man was in any danger."

(*Pr. Record*, 880-881.)

Judge Clark knows Capt. Shipp and his general character; it is good and he is entitled to full faith and credit on his oath.

(*Pr. Record*, 882.)

Robert Pritchard says that he was out on the street going his round about 5 o'clock; that up to that time he had not heard the subject of Judge Harlan's order or the action of the Supreme Court thereon mentioned.

(*Pr. Record*, 888-889.)

Judge S. D. McReynolds, Judge of the Sixth Judicial Circuit, State of Tennessee, examined, says:

Ed. Johnson was tried for rape before him; witnessed most of the attempted lynching the night after Ed. Johnson was arrested, January 23rd; tells what he witnessed at that

time and shows how the officers protected the prisoner.

(*Pr. Record*, 890-892.)

Witness tells of Capt. Shipp's removal of Johnson from the jail before the mob reached there; tells of the trial of Ed. Johnson and what attorneys he appointed to defend him.

(*Pr. Record*, 890-898.)

Witness tells of his and other's efforts to secure protection at the jail on the night the lynching occurred. When asked if there was anything that he could see that Capt. Shipp could do about helping in view of the conditions at that time, said:

> A. "*I have thought of it a good deal. Unless he had had some of his officers there, I do not see what good he could have done. I think it is an absurd idea to talk about summoning people to go there at that time after that mob.*"

Witness knows the general character of Capt. Shipp; it is splendid; would believe him on oath; his character for peace and good order is good.

(*Pr. Record*, 904.)

COPY OF CHARGE GIVEN GRAND JURY IN INVESTIGATING LYNCHING.

He says no indictments were found by the grand jury.

(*Pr. Record*, 907.)

Witness tells about the efforts made by Capt. Shipp to protect the prisoner.

(*Pr. Record*, 910.)

Rev. J. W. Bachman, the pastor of the First Presbyterian Church in Chattanooga, who has lived in Chattanooga and held that position for thirty-four years — the unquestioned head of the Chattanooga priesthood, and the most beloved citizen in Chattanooga — testified that his office was very near the jail; that he mixed and mingled with the citizenship of Chattanooga generally and with all classes of people; *he had taken great interest in the case and had been consulted, as an old citizen, by the sheriff and judge of the Criminal Court about protecting the prisoner and insuring him a fair trial.* His testimony shows that he kept up with the case and *was in a position to know the state of public feeling in Chattanooga.* He was asked:

> Q. "*Was there anything, in your judgment, knowing the public as you did, to cause a reasonably prudent officer to suspect that Johnson was in danger of being lynched at the time he was lynched?*"
>
> A. "*I would not think so at all. I had no thought of it, and I did not know of any man at the time that had any thought of it. It was a surprise to us all — a very great surprise.*"
>
> (*Pr. Record*, 921-926.)

It was the abhorrence of the crime that brought about the lynching.

(*Pr. Record*, 929.)

Witness has to do with all classes of people and mingles with them.

(*Pr. Record*, 936.)

Rev. Wm. C. Robertson, witness on behalf of defendants, pastor of Christ's Church, Chattanooga, Tenn., says there was a great deal of excitement at the time of the commission of the crime and arrest of Johnson. *This feeling and excitement died out completely after the trial and conviction of Johnson. The fact that the cause was taken up in the Federal Court did not revive the excitement or cause any talk of lynching, that he heard. He mixes with all classes. There was no excitement at the time the lynching occurred that he heard; heard no talk of lynching whatever; nothing occurred among the people that caused apprehension of lynching that he could see.*

(*Pr. Record*, 939-940.)

Witness says he is acquainted with the general reputation and character of Capt. Shipp; it is eminently good and he certainly would believe him on oath; his character for peace and good order is *very good*.

(*Pr. Record*, 942.)

Thomas H. Payne, a merchant doing business on Market Street, Chattanooga, has known Capt. Shipp for thirty years; knows his general character; it is good. He is entitled to full faith and credit on his oath; knows his character for peace and order; it is good.

(*Pr. Record*, 942-943.)

At the time and for some weeks previous to the lynching witness knows of no excitement at all personally; did not

hear anything to cause him to apprehend that a lynching was about to take place. His store is in the business part of the city, between Eighth and Ninth Streets; is much frequented; he heard nothing to indicate there was danger of lynching; did not know of any existence of feeling favorable to mob violence at that time.

(*Pr. Record*, 943-4.)

R. H. Parrent, witness for defendants, is a merchant in the paint and glass business. Trades largely with working men; his place of business is on Market Street, Chattanooga; lived near Capt. Shipp — next door; knows him well, and has for a number of years; knows the same people he knows and associates with the same people; knows his general character; it is good; his character for truth and veracity is good; his character for peace and quiet, peace and good order is perfect.

(*Pr. Record*, 946.)

On the night of the lynching he was living so close to Capt. Shipp that he could hear him talking over his phone. About nine o'clock that night he heard the 'phone bell ring and Capt. Shipp talking over the phone in an unusually loud tone—. Later on I heard him say, I will be there immediately. I heard him leave the house, slam the front door and go out in a hurried manner. It was something a little bit unusual, but at the time I did not think anything particular had caused the call for him. The unusual and excited man-

ner in which he left the house attracted witness' attention; heard of Johnson having been lynched the next morning when he got the newspaper. There was nothing that caused him to expect a lynching.

(*Pr. Record*, 948.)

Johnson and his case, so far as witness knew, had passed out of the public mind entirely.

(*Pr. Record*, 951.)

Had not heard it discussed in any way whatever for a long time. Was never more surprised in his life than he was next morning when he saw the paper notice of the lynching of this negro.

(*Pr. Record*, 952.)

Jas. A. Caldwell says he is a lawyer and has resided in Chattanooga forty years; knows Capt. Shipp; has known him twenty-four or thirty years, knows the people with whom he associates; his acquaintance is very general and so is witness'; knows his reputation, his character; it is good; knows his general character for truth and veracity; it is good; knows his general character for peace, quiet and good order, and it is good; was living in Chattanooga at the time of the arrest of Johnson and the attempt to lynch him, his trial and sentence and his final lynching. That after the trial of Johnson, February 9th, there was no excitement in regard to Johnson or the crime in the community. His opportunities for observing this matter were as good as those of the average citizen, and that at the time of the lynching

there was no cause to apprehend a lynching so far as he knew.

(*Pr. Record*, 954-955.)

J. D. Nicklin, witness for defendants, has lived in Chattanooga over forty years, and is a druggist. His store is on Market Street, in the principal business part of the city. His store is and has been for many years a very popular resort He says everybody — people of all kinds — have been in there. It is called the Nicklin Club. Knows Capt. Shipp well and has for thirty years or more; knows his general character; it is of the very best; knows his general character for truth and veracity; would believe him under all circumstances and conditions. He has always been a truthful, law-abiding citizen. After the trial of Johnson the public excitement had subsided. There was no excitement at the time of the lynching.

(*Pr. Record*, 955-6.)

F. H. Dowler, agent for the Nashville, Chattanooga & St. Louis Railway in Chattanooga, has known the defendant Jerimiah Gibson for about twenty-five years; knows his general character; it is good, and he is entitled to full faith and credit on his oath.

(*Pr. Record*, 961.)

There was considerable excitement when Johnson was first arrested and up until his trial in the Court. *The excitement, from witness' observation, had subsided after he was convicted. He observed no public excitement or any evi-*

dence of public excitement from that time on to the time of his lynching, nor anything indicating that a lynching might be expected.

(*Pr. Record*, 962.)

P. A. Brawner, witness for defendants, resides in Chattanooga, and has since 1874; is engaged in the manufacturing business, "Ross-Meehan Foundry Company." It is situated on Carter Street, near Montgomery Avenue. There are many manufacturing establishments around this point. It is a district where most of the men who work in foundries, machine shops, etc., reside. His concern employs about 450 men. *At the time of the lynching all excitement had blown over.* There had been excitement prior to the trial of Johnson, but it had died out after his conviction. *Saw no excitement after the trial and conviction of Johnson. Has known Capt. Shipp about twenty years; knows his general character; it is good.*

(*Pr. Record*, 965-967.)

Charles Herron, witness for defendants, has lived in Chattanooga about eighteen years; came here from Cincinnati, Ohio; has known Capt. Shipp ever since witness came here; knows his general character; it is A-No. 1. I do not think there is any better in Chattanooga; would believe him on oath. His character for peace and good order has always been the very best. Witness is engaged in the foundry business; employs about 250 men; mingles with them, right among them; has mechanics, moulders, machinists,

draftsmen, etc., in his employ; remembers the circumstances of Ed. Johnson's alleged assault. There was a great deal of excitement and ill-feeling manifested toward him about the time the crime was committed and he was arrested; remembers the circumstances of his trial. After the trial and conviction the excitement blew over. *Up to the morning of the night of the lynching he saw nothing from which he apprehended mob violence at that time; was not in the city during the day.*

(*Pr. Record*, 972-3.)

Witness says that from his knowledge or acquaintance with the people in Chattanooga that, *the fact of the Federal Court having taken jurisdiction lessened the danger, and considered it was a safeguard to the prisoner; that they would not dare to do anything against the United States Government.*

(*Pr. Record*, 974-5.)

Wm. E. Love, witness for defendants, moved from Chicago to Chattanooga in 1887 and has lived here ever since. He is in the manufacturing business — stoves, castings and cornice work, with the Mountain City Stove Manufacturing Co.; also has a store on Market Street; employs from seventy-five to eighty-five men and sometimes more; came in personal contact with the men.

Witness has known Capt. Shipp since 1887; knows his general character; it is good; would believe him on oath. His character for peace and good order is good. *There was*

a great deal of excitement at the time Johnson was first arrested. The public generally took a great interest in the matter. This excitement died out after he was convicted. The matter was not being discussed so far as he knew at the time the lynching actually took place; heard no comment at all on the subject, either on the day or night the lynching occurred; considered the fact that the Federal Government had granted an appeal to Johnson would render his condition more safe, as generally parties that do mob are more afraid of the United States Court than they are the local courts.

(*Pr. Record*, 975-979.)

Dr. P. D. Sims, witness for defendants, has lived in Chattanooga fifty-one years, practicing medicine; has mixed with the people of Chattanooga fifty-one years; still practices his profession; was for fifteen years member of the Board of Health; is now city physician. His office is in less than one block of the county jail; has been there fifteen years. At the time of the actual lynching he neither heard or saw manifested in any way any mob spirit or disposition to lynch Johnson. Witness did not go to Capt. Shipp at this time because it did not occur to him that there was danger, but had on previous occasion been in consultation with him and conferred with him, making suggestions in which Capt. Shipp always entered heartily in taking active measures for the protection of his prisoner.

(*Pr. Record*, 980-981.)

Witness knows Capt. Shipp's general character. It is good, without a blemish. His general character for peace, prodity, quiet and good order is absolutely good. His veracity is unimpeachable.

(*Pr. Record*, 982.)

Samuel T. Dewees, witness in behalf of the defendants, is engaged in the mercantile business on Market Street, Chattanooga. Has known Capt. Shipp ever since he has been here, and knows his general character. It is very good; would believe him on oath. Knows his general character for peace and good order; it is good. Remembers the circumstances of Ed. Johnson being arrested and charged with the rape of a white girl. Remembers there was a good deal of excitement and bitter feeling soon after his arrest and on up until the trial, and talk of mob violence. *It subsided to a very great extent after his conviction, and from that time up to the day Johnson was lynched at night he had not heard of any excitement or threats of lynching. Did not hear the subject mentioned by anyone on that day.*

(*Pr. Record*, 981-990.)

All classes of citizens want rapists brought to justice. *He was not surprised at the attempt to lynch him the first time, but was surprised and was not expecting a lynching at the time it occurred.*

(*Pr. Record*, 994.)

The abhorrence of the crime still continued, does yet and always will.

(*Pr. Record*, 995.)

Judge C. D. Clark, witness for defendants, is acquainted with the defendant Jerry Gibson and *has known him ever since 1883; is acquainted with his character. It is good; would give him full faith on his oath in a court of justice.*

(*Pr. Record*, 997-8.)

J. H. Cantrell, a lawyer practicing in Chattanooga and has been for twenty years. His office is in Miller building, corner of Seventh and Market Streets, about two squares and a half from the jail. He thinks there were on an average of about 300 people attending the Johnson trial at Chattanooga. The day after the trial was concluded a conference was held in his office. He was one of the committee appointed to go over the case with Jud. Shepherd, Mr. Thomas and Mr. Cameron, the attorneys for Johnson.

(*Pr. Record*, 998-9.)

Messrs. Thomas and Shepherd both stated in the conference to us that they had gone over the evidence in the trial of the case of Johnson carefully and that so far as they were able to see there was no reversible error in the record and they knew of no error in the admission of evidence or charge of the court, and that the Supreme Court of Tennessee would not be justified in reversing the case on the ground of want of sufficient evidence to sustain the verdict, and that an appeal would only mean delay.

(*Pr. Record*, 1000-1001.)

Witness *saw no indication of a disposition to lynch John-*

son after he was sentenced by Judge McReynolds; was up that night until about ten o'clock; knew nothing of the lynching until the next morning.

(*Pr. Record*, 1005.)

Houston Gibson, witness for defendant Jerry Gibson. Witness is a son of defendant Jerry Gibson and is fifteen years of age. Remembers the lynching of Ed. Johnson for rape; went with his father the evening of the lynching to the jail. They left home about 5:30 p. m. The jail is about two miles and a half from his father's residence. They drove a horse and buggy; saw Jailor Brown on reaching the jail; he was day jailor; handed the keys of the jail to his father over the fence. His father went into the jail while he went to put up the horse in a stable behind the jail; went back to the jail; was with his father. There was no one in there except his father and himself. He went the rounds with his father; remembers the woman that was in the hospital cell; don't know her name. Witness went to the hospital cell and his father went down stairs and went the rounds down there. He talked with the woman. Ellen Baker was in the hospital cell while I was talking to her. I was on the outside. She was locked up; stayed at the jail with his father until about 8:30 in the evening, then went to the theatre; came back to the jail after the show was over; found that the jail doors were broken down and that they had got Ed. Johnson out and lynched him; that is why I

know I talked to Ellen Baker that night.

(*Pr. Record*, 1006-9.)

W. A. Meyer, on behalf of defendants, is a son-in-law of Capt. Shipp; resides on Lookout Mountain in summer and boards at Capt. Shipp's in winter; was boarding at Capt. Shipp's last March a year ago (that is from date of his deposition.) He and Sam Hardin are brothers-in-law, having married sisters, daughters of Capt. Shipp. Witness' wife's name is Carrie and Hardin's wife's name is Lillie. He knows the negro girl, whose name is Julia Wofford. He and his wife and Hardin and wife and Capt. and Mrs. Shipp were often at the dining-table at meals together; never heard Capt. Shipp make a remark that if there was a stay of proceedings in relation to Ed. Johnson he would be lynched, or any remark in substance if an appeal was granted Ed. Johnson would be lynched or mobbed, nor did he hear Capt. Shipp make such remark at any other time, at his residence or anywhere else. He was boarding at Capt. Shipp's the week after Ed. Johnson had a hearing before Judge Clark. No such conversation or anything like the remark of Julia Wofford occurred at that week or at any other time.

(*Pr. Record*, 1014-1015.)

Mrs. W. A. Meyer. Her testimony corroborates that of her husband and contradicts the statement of Julia Wofford.

(*Pr. Record*, 1016-1017.)

Mrs. Lillie S. Hardin, daughter of Capt. Shipp, also con-

tradicts the statements made by Julia Wofford as to the remark of Capt. Shipp and corroborates the statement of W. A. Meyer and wife and shows that Julia Wofford's statements are not true and therefore cannot be believed, according to the rules of evidence.

(*Pr. Record*, 1018-1019.)

Jerimiah Gibson, witness on behalf of defendants, was born in North Carolina; came to Tennessee in 1867; was a soldier in the Confederate army; was during the months of February and March, 1906, night jailor at the jail in Hamilton County, Tennessee, under Capt. Shipp, sheriff; has six children, only two living with him. His son Houston has been examined in this case; remembers the night of the lynching; his son came with him the night of the lynching to the jail; came in a buggy; saw George Brown, the day jailor, when he got to the jail; had no conversation with him; he just handed me keys; when I got the keys I went inside the jail office; my son went to put the horse up; was gone from twenty to thirty minutes; came back in about twenty or thirty minutes. *The first thing I did after I got to the jail was to go around and see that the jail doors were all closed and locked; my son went with me, he going up the steps and I going down; I went all around and inspected the jail. There was no chains on the jail doors that night that I noticed;* would have seen them if they were there. He could not have gone in if chains had been on the doors. There

were only two persons on the floor that Ed. Johnson was on that night, a woman prisoner and Ed. Johnson. The woman's name was Baker, the same who has testified in this case; the other cell on that floor was not used and was standing open; Ellen Baker was locked up in her cell. I got to the jail about 6:15 or 6:20 in the evening. My son Houston stayed at the jail until about 8:25 or 8:30; he went to the Opera House; don't remember a single person there with him that evening. *He knows Joe Franklin, who has testified in this case. He did not bring a prisoner there at 7 o'clock or at all that night; did not see him that night.* There were no deputies there taking supper and drinking beer that night; was upstairs opposite the Baker woman's cell when the mob came on the fourth floor; the front door of the jail was closed when they came; I had locked it; the Baker woman when I went up wanted some water or medicine and I had to draw some water from the bath room and hand it to her. *The first witness knew or heard of the mob was when he heard someone say: "We are going to have that damned negro."* He then stepped over into the hospital cell. I knew if I went downstairs they would kill me or take the keys, and *thought I had better protect the jail by staying inside and keeping the keys.* Just in an instant after I heard this remark they begun hammering the door; they broke it in; when they broke down the door they came rushing upstairs — a crowd of them — and begun pounding on

Ed. Johnson's cell; they had not discovered me up till this time; then, in a few minutes they began calling for the jailor to know where he was; they wanted the keys and they came in the room where I was and stayed with me, they first getting the keys. They wanted to know what I was hiding for; said I was trying to protect the negro; they pulled me around considerably; *they got the keys from me, I suppose in five or ten minutes; they took them by force; they disarmed me; took my pistol; surrounded me and disarmed me.*

(*Pr. Record*, 1019-1026.)

"After they had disarmed me and taken my pistol they had three men to stay with me and guard me and kept me until Ed. Johnson was taken away from the jail; these men were armed; they had pistols; they took me downstairs or anywhere they wanted to go; they took me over first and wanted me to unlock the door to Johnson's cell, and I told them I could not do it because they had broken the lock; after they had taken the keys they tried to unlock the door and could not do it; they had broken the lock; said I was lying when I said I could not unlock the door and that those were not the keys that I had given them; that there was another set of keys; there was no other set of keys; *they kept me guarded all the time after they came.*"

(*Pr. Record*, 1026-27-28.)

"Had no conversation with Capt. Brown when I got to the jail or before he left that night. Capt. Brown did not state to me they were expecting a mob that night. I fix the time the mob arrived by knowing that I go around and turn the lights out at 9 o'clock; that I had not turned out the lights when the mob came; they came before I turned out the

lights; was on the fourth floor — Ed. Johnson's floor — when they came; stairways are all inside of the hall; it did not require them over ten minutes to break in the front door; couldn't give warning of the situation; the reason I did not make resistance to the mob was that from the amount of noise and the guns they were using I thought that I would be killed instantly if I did so."

On cross-examination witness says Capt. Brown did not state to him they were expecting a mob that night.

(*Pr. Record*, 1033.)

Witness was overpowered is his reason for not resisting, as he thought he would be killed instantly if he did so.

(*Pr. Record*, 1042.)

Witness Jerry Gibson, being re-called, denies the statement handed him, purporting to have been made by him, by the attorney for the Government.

(*Pr. Record*, 1056.)

He did not make that statement to the men.

(*Pr. Record*, 1056-7.)

Did not tell them he knew the members of the mob, or a great many of them.

(*Pr. Record*, 1057.)

Will Burke, a policeman for twelve years; was on the force the night of the lynching of Ed. Johnson. His beat on the night of the lynching ran from Market to A street, Eighth and Ninth, from Market to A, and from Eighth to Ninth on Market, Cherry and Georgia Avenue; considered the most important beat in the City; heard of the lynching

something after 10 o'clock at Eighth and Market Street; heard it from a motorman; the car had no bell or rope; the ropes had been taken by the mob to lynch the negro. Five or six minutes after he got this information he saw Mr. Galloway, Mr. Baker and Fred Frawley running across Market Street in the direction of the jail. "I told them it was too late, the negro was already dead."

(*Pr. Record*, 1058-60.)

The officers, Galloway and others, were running in a trot; saw no indication whatever of any mob or crowd on his beat; his beat went to *The Times* office on Georgia Avenue; the town was quiet. When he saw these men, Galloway and others, and told them it was too late, the negro was dead, they made no halt and did not answer.

(*Pr. Record*, 1058-1060.)

Witness says the lynching was a complete surprise to him.

(*Pr. Record*, 1060.)

Matt Galloway, witness for defendants, is a married man; was the criminal court deputy under Shipp; had been ever since witness was an officer under Shipp; served criminal papers; had nothing to do with the jail only when there to guard at night and three or four days during Johnson's trial; that was the only time he had anything to do with the jail; it was no part of his business to exercise any supervision over the jail as a guard or protect its prisoners. After Johnson was convicted had not been at the jail as a guard, at any

time after Johnson was brought back from Knoxville, 10th or 11th of March.

(*Pr. Record*, 1062.)

Witness had heard no threats of lynching or of any disturbance on the day or night of the lynching. He was at the Eagle Club rooms the night Johnson was lynched; belongs to the Masons, Odd Fellows, Rebekahs, Knights of Pythias, Fraternal Censer, Junior Order and the Iron Moulders' Union; got information they were lynching Johnson and went immediately to the jail; when witness got to the jail he met Capt. Shipp coming outside the door. He ascertained that they had gone with the prisoner. Capt. Shipp asked him to go to the bridge; he went; before starting he got a gun and a pistol; he wanted a Winchester rifle; he got it and filled up the magazine; didn't see any guns except those he and Baker had; was not at the jail the night of the lynching with Frawley and others, as stated by Walker; he had not agreed to allow Johnson to be lynched with the lynchers or anyone else; had not combined or confederated with anybody in regard thereto; knew nothing of anyone having any intention to lynch him.

(*Pr. Record*, 1063-1068.)

This witness tells what occurred at the jail on the night when the first attempt was made to lynch Johnson, and of Capt. Shipp's efforts to protect him by removing him from the jail before the mob had organized. No one expected

the mob on the night the lynching occurred.

C. A. Baker, deputy sheriff under Capt. Shipp; had been deputy since Shipp was first elected; tells of what he did in assisting Capt. Shipp in the removal of Johnson before the first mob attacked the jail.

(*Pr. Record*, 1077-78.)

Witness was at the Eagle Hall on the night of the lynching; had no communication, no suggestion or hint that day or that night that Johnson was likely to be lynched; had no communication with Capt. Shipp or any of his deputies in relation thereto, nor any understanding with any of the supposed lynchers or mob; he heard nothing that day or night that there was likely to be or probably would be a lynching of Johnson; nothing occurred to arouse his suspicion that there might be such a thing; had no suspicion of any such action; he was playing a game of cards at the Eagle Club with Mr. Frawley, Jim Elliott and Matt Galloway; don't remember just what time they left the Eagle Club; someone brought information that there was a mob at the jail or something to that effect; got up and left immediately for the jail; Matt Galloway and Fred Frawley went with me; remembers Mr. Burke hollered something as they passed on the street; he was a policeman; don't remember what he said; when he reached the jail he found they had gone with Johnson; saw Capt. Shipp at the jail, the only person I now remember of seeing; he told us to go to the bridge as soon as

we could, Mr. Galloway and myself; we did it as quick as we could get guns; found Johnson dead when we got there; didn't see any who had executed Johnson or that he knew had taken part in it; we did not stay there a great while; came back to the jail; witness would have defended the jail and the prisoner; *they had not been guarding the jail at night after Johnson was convicted.*

(*Pr. Record*, 1079-80.)

They did not keep up any guard after Johnson was brought back from Knoxville; heard no manifestation of a desire to mob him anywhere that day, nor did he hear or see, or know anything that affected his safety or indicated danger to him while in jail after he was returned from Knoxville.

(*Pr. Record*, 1081.)

M. J. Horan, witness for defendants, walked up to the jail on the night of the lynching and

> "saw Capt. Shipp, and he was very much excited. In fact, he was *almost in a faint.* He was as white as a sheet. I walked up to him, and he just put his hand on my shoulder and said, 'My God, they have ruined me.' I told Sheriff Shipp to sit down, and he started to sit down. Then he jumped up and said, 'My God, I did everything I could.' I said, 'I know that, Sheriff.' I said, 'You are not to blame, you have done everything you could have done.' I said, 'No one expected this.' He said, 'My God, no.' I told him to sit down again. I asked him if I could get him a drink, and he shook his head and said 'No.' I asked him if he thought he was going to faint, with his head hanging over, and I walked out to see if I could get him a drink of water. I did

not see any and I came back and resumed my conversation with him. *I told him no one in the world knew anything about it. He said, 'My God, I did not.' I told him no one did.* I told him I was down in the street right there at the jail before I heard or saw anything."

"In a short while after the mob left the jail, Deputies Galloway and Baker arrived at the jail. They had been with a party of friends playing cards at the Eagles Club when notified that the mob was at the jail. They ran from the club room to the jail, but arrived after the mob had left. Capt. Shipp told them to go at once to the bridge where the mob had the prisoner. This, they did."

(*Pr. Record*, 1085-87-89.)

J. S. Bell, foreman of the grand jury impanelled to inquire into the lnyching of Ed. Johnson, that is, the jury that was directed under the charge of the criminal Court Judge to investigate and return true bills against anyone found that had been a member of the mob that had lynched Johnson. The Judge gave them a special charge in relation to this lynching. The jury got no evidence, or at least not sufficient evidence to find an indictment against anyone.

(*Pr. Record*, 1090-92.)

John Brown Cameron, witness for defendants, remembers the circumstances of the lynching of Ed. Johnson in March, 1906; is acquainted with *Jerry Gibson, who was night jailor at the time; went to see Jerry Gibson on Sunday night before the lynching, on Monday night between 7 and 7:30 o'clock; there were no other guards at the jail except Gibson on that night.*

(*Pr. Record*, 1093.)

Capt. J. F. Shipp, witness on behalf of defendants, says: He was the Sheriff of Hamilton County when testifying and also on the night of March 19, 1906. That Ed. Johnson was arrested by one of his deputies on the 25th of January, 1906, of which he was notified and went at once to the point where he learned the arrest had been made. Carried Johnson in his buggy to the jail by a circuitous route. There was a great deal of excitement at that time which grew out of the crime that had been committed on the night of the 23rd.

(*Pr. Record*, 1094.)

This defendant and witness then tells what efforts he made to protect and prevent the mobbing of Johnson, which is found on pages 1095-1100, *Pr. Record*.

He then tells of the indictment and trial of Ed. Johnson.

(*Pr. Record*, 1100-1102.)

The guards that had been kept at the jail were removed on the 9th of February; Johnson and other prisoners having been carried to Knoxville. He had no guards after that date except at one time when a negro by the name of Wilson had been arrested charged with murder and only then for two or three days, that is, no guards after Johnson was convicted and carried to Knoxville, with the exception above stated, until the lynching took place.

(*Pr. Record*, 1103-1104.)

Johnson was brought back from Knoxville on the 10th of March, 1906. *There was no excitement when he returned*

with the prisoner. There was no excitement or anything that he discovered that could put a prudent and careful man on his guard or any notice that there would be an attempt to lynch Johnson on the night he was lynched. "I never conspired with any living man, my deputies or anyone else; and I had no knowledge, not the slightest, that there would be any effort upon the part of anybody to interfere with Johnson."

Witness is asked:

> "State whether or no if you had suspected, or if you had seen or realized that there was going to be any effort or any attempt at mobbing the prisoner what course would you have pursued for his protection?"
>
> A. *"I should have certainly done as I had done before, endeavored to protect him."*

When asked in his opinion the granting of the order, allowing appeal, by the Honorable Court had anything to do with causing or bringing about the lynching of Johnson, he said:

> A. *"I do not know what was in the minds of the people who did the lynching. I know that it had not occurred to me that anybody would interfere with the order of the United States Supreme Court."*
>
> Q. "I will ask you to state whether or no you have always, and did at that time, regard and hold the Supreme Court and its authority as of the highest and entitled to the greatest respect, and whether you intended in any way to hold its action in contempt?"

A. *"I certainly had not done anything to bring myself into contempt of the Supreme Court, and had always held the Court in the highest respect."*

Q. "State whether or not it has always been your purpose to uphold and maintain law and order as a good citizen?"

A. *"Yes, sir; I am opposed to mob violence. I am in favor of upholding the law as the best security for the public."*

(*Pr. Record*, 1104-1105.)

Witness tells of how he first heard of there being some commotion at the jail and advice to him to go down and see about it. Says when he reached the jail he entered rapidly and just as he reached the inside of the door he saw *Mr. Gibson sitting back against the wall with three or four men standing around him. Witness started over to make some inquiry of him and just as he did so he was seized from behind by several men; when seized he did not know but what they were going to do him some violence and he reached for his gun.* They rushed him upstairs and carried him into the hallway, where he was kept prisoner during the time they were getting the prisoner. He was kept a prisoner until they had left the jail with Ed. Johnson.

(*Pr. Record*, 1106.)

On page 1107 (*Pr. Record*) witness tells of the fraternal orders to which he belongs and of the different positions he has held in them.

On page 1109 (*Pr. Record*) the defendant Shipp is

asked by the attorney for the Government if he had read in *The Chattanooga Times* the morning after Johnson had been sentenced W. G. M. Thomas' statement, and witness says he does not remember, but in answer to another question he says he thinks he read it. The introduction of this article as evidence was objected to because it was incompetent, irrelevant and had nothing to do with this case at bar; being merely a newspaper statement it could not be made evidence in this cause. This article of Thomas' will be found on page 1109 to 1111 (*Pr. Record*), and certainly cannot be under the rules of law treated as evidence.

All statements in the record of what was said by the attorneys representing Johnson or those appointed to confer with them by the Court, were objected to by defendants, and the objections should have been sustained — as also should the objections to the introduction of the Thomas statement, and all other newspaper statements have been sustained and said communications, statements, etc., excluded as evidence. Witness, when asked if he saw Chivington, said he did; that he did not speak to him. He (Chivington) was not restrained. He did not call for a posse to relieve him or help the prisoner because he did not think it was —— (here the Government attorney interrupts.) Witness finishes: "I did not think there was anybody there that would respond to the call if they had been called upon." He remonstrated with the mob and asked them to leave the man

alone and let the law take its course. It did not occur to him, when notified that there was something going on at the jail, to go somewhere else and summon help before he knew what the trouble was.

(*Pr. Record*, 1121.)

A man's hindsights are a great deal better than his foresight —(meaning that it was much easier to see things that might have been done after the act had been committed than before.) He regarded everyone there around the jail as a part of the mob. No one offered any help or suggested they would render any assistance. In fact, I was under arrest myself at the time I reached the inside of the jail; no one offered to come to my assistance; had no opportunity to summons anyone to my assistance.

(*Pr. Record*, 1122-3-4.)

He was carried upstairs and kept in confinement during the time the mob was there and until they had taken Johnson from the jail.

(*Pr. Record*, 1125-6.)

W. T. Center, witness for defendants, knows Ellen Baker; knows her general character; it is very bad; from that general character he would not give her credit on her oath. She is in what he would term the whorish business.

(*Pr. Record*, 1127-28.)

She was also engaged in selling moonshine liquor.

(*Pr. Record*, 1129.)

J. H. Stuart, witness for defendants, testifies to about the same thing in regard to Ellen Baker as does W. T. Center.

(*Pr. Record*, 1130-33.)

The testimony of Mrs. J. H. Springfield, page 1133 to 1146 (*Pr. Record*), has reference alone to Padgett Stonecipher, as has also the testimony of Chas. Smith, A. J. Cox and Claud Springfield.

(*Pr. Record*, 1146 to 1160.)

ARGUMENT.

May it Please the Honorable Court:

I.

The first question we will discuss is that raised under the information:

"*Were Sheriff Shipp and his deputies informed, and did they have every reason to believe, that an attempt would be made, on the evening of March 19th, or early in the morning of the 20th, by a mob composed of a large number of armed men, to force an entrance into the county jail for the purpose of taking Johnson therefrom and lynching him?*"

Defendant, Sheriff Shipp, and each of his deputies, deny that they were informed or had any reason to believe from current reports or rumors conveyed to them, or from any other circumstance, that an attempt would be made on the

evening of the 19th or early in the morning of the 20th by a mob, composed of a large number of armed men, or otherwise, to force an entrance into the county jail for the purpose of taking Johnson therefrom and lynching him; or that the sheriff withdrew from the jail early in the evening of the 19th the usual and customary guard. It is true that Jerry Gibson was the customary guard at night and he was left in charge of the jail as usual on that night. They also deny that they committed other acts or did other things evincing a disposition on the part of said Sheriff and deputies to render it less difficult or dangerous for the mob to prosecute and carry into effect its unlawful design and purpose of lynching Johnson.

This, as we insist for defendant Shipp and Gibson, is the first and one of the material issues presented and to be tried in this cause. The burden of proof to establish the allegations contained in the information is upon the Government, and we respectfully but earnestly insist that the proof in this record fails to sustain the foregoing charges contained in the information; that it not only fails to do so, but it actually disproves said charges, as is seen from a collation of the testimony, as hereinbefore set out.

It will be noted by reference to the testimony, as hereinbefore set out, that the witnesses for the Government, as well as those on behalf of the defendants, establishes beyond controversy that there was no excitement or anything in the con-

duct of the people on that day or evening up to the time the mob reached the jail that indicated or would have indicated to a reasonably prudent *officer* that Johnson was in danger of being lynched on the night he was lynched. This is shown by the testimony of L. G. Walker, John L. Chivington, Joseph R. Curtis, T. S. Wilcox, Andy Ware, George B. David, all witnesses for the Government, contradicting the allegation contained in the information in reference to the officers having the information of mob as charged; as do also the following witnesses on behalf of defendants: Dr. A. W. Boyd, A. N. Sloan, Dr. Cooper Holtzclaw, Jas. P. Pemberton, Robt. E. Pritchard, Oscar Yarnell, Dr. M. J. Lewis, O. G. Stone, E. B. Herron, J. J Bork, Marion Perkins, Attorney-General M. N. Whittaker, Rev. Ira M. Baswell, Hon. C. D. Clark, Hon. S. D. McReynolds, Rev. J. W. Bachman, Rev. Wm. C. Robertson, Thomas H. Payne, R. H. Parrent, James A. Caldwell, John B. Nicklin, Pembroke A. Brawner, Chas. Herron, Wm. E. Love, Dr. P. D. Sims, Samuel T. Dewees, John H. Cantrell, Jeremiah Gibson, Matt Galloway, C. A. Baker, M. J. Horan, J. S. Bell, John B. Cameron, and Capt. Joseph F. Shipp. These witnesses, on behalf of defendant, also contradict and disprove the charge contained in the information that defendant Shipp, Sheriff of Hamilton County, withdrew the usual guard from the jail on the day or evening of the lynching to make it more easy for the mob to carry out

its purposes. The proof, as we respectfully insist, not only refuting this charge, but establishing beyond question that the charge is untrue and has no foundation upon which to rest.

II.

We respectfully insist that the Government has also failed to sustain by proof the charge contained in the information that the defendant Joseph F. Shipp, and the other defendants named, did willfully, unlawfully, combine, and conspire, and confederate together for the purposes alleged. In fact, as we insist, there is not one particle of evidence in this immense record going to sustain this charge in any particular, but on the contrary the proof of these various parties disproves the charge, and certainly no judgment can be based upon this allegation in the information.

Therefore, we respectfully insist for the defendants Shipp and Gibson that the finding of the Court holding them guilty of contempt under the allegations contained in the information, is contrary to the great weight of the testimony on the issues in this cause, and that for these reasons a new trial should be granted your defendants, or the former finding and judgment of the Honorable Court should be reviewed and reversed and the charges dismissed as against these defendants.

We respectfully but most earnestly insist that the Honorable Court, in the majority opinion, erred "in admitting as

evidence the various newspaper articles, the purported interview of defendant Shipp, as published in the newspaper, and the article of W. G. M. Thomas over the objections made to their introduction when offered, which objection set out the grounds of objection"; as we understand the opinion of the majority of the Court is largely based upon various newspaper articles, ex parte statements published in the newspapers, and with which defendant had nothing to do, with the exception of the interview published in *The Birmingham Age-Herald*. We respectfully insist that the published statement of the interview is incompetent and irrelevant, because the reporter Evans was examined as a witness on behalf of the Government and in his testimony he detailed the interview; not only that, but he shows that the published article was not written at the time the interview took place, but afterwards from memory.

When we compare the interview as published in *The Birmingham Age-Herald* with the testimony or evidence of the reporter himself, as to this interview and as to what Capt. Shipp actually said, we see that Capt. Shipp's statement as testified to by the witness is as follows:

> A. *"Well, he said that the people of Chattanooga were perfectly willing to let the law take its course and always had been, but that delay —"*
>
> Q. *"What delay?"*
>
> A. *"The delay in letting the law take its course, I suppose."*

Q. *"In what way? In any particular Court?"*

A. *"I should judge from what he said in all Courts."*

Q. *"Delay in letting the law take its course had done what?"*

A. *"Was perhaps really at the bottom of the lynching."*

(*Pr. Record*, 266.)

So it will be seen that the published interview is very different from the evidence of Capt. Shipp's statement as detailed by the witness (the reporter himself.) It is seen from the published statement that the reporter come to draw upon his imagination in writing a sensational article clothed it in garments of his own fancy and entirely distorting the actual statement of the witness.

We, therefore, respectfully insist that this published statement cannot be looked to as evidence in the cause, as this interview is not made an issue in the information.

Take for instance, the Thomas article: it was written some time before the lynching of Johnson, immediately after his trial and conviction. With this the defendants had nothing to do, and said communication is certainly incompetent and irrelevant as against these defendants.

It is a rule of law that in criminal cases it is guaranteed by the Constitution of the United States that every person accused of a crime shall be confronted by the witness face to face; and the admission of these articles and publications and

making them testimony over the objections of the defendants, we respectfully but most earnestly insist, is contrary to the rule of evidence in criminal cases and the guaranty of the Constitution.

(*U. S. Constitution, Amendm. Art.* 6.)

(*U. S. vs. Angell*, 11 *Fed.*, 34.)

Defendants had no opportunity to cross-examine the party writing these articles and were thus deprived of the guarantee of the Constitution. We deem it unnecessary to refer to authorities to sustain this proposition.

It is also a general rule "that it will be presumed that public officers have qualified, that their official acts are properly performed and everything in connection with the official act was legally done, whether prior to the act, as giving notice, serving process *or determining the existence of conditions prescribed as a prerequisite to legal action, or subsequent to such act.*"

(16*th Cyc.*, 1078-9.)

It is, moreover, a rule of procedure that the burden of proving unlawful or irregular conduct rests upon him to who asserts it, since there is no presumption of official irregularity.

(16*th Cyc.*, 1078.)

(*Knox County vs. New York Ninth National Bank*, 147 *U. S.*, 91.)

(*Keyser vs. Hitz*, 133 *U. S.*, 138.)

(*Callahan vs. Meyer*, 138 *U. S.*, 617.)

Among the officers in favor of whose acts a presumption of regularity has been extended are sheriffs and numerous other officials.

(16*th Cyc.*, 1078.)

(*United States vs. Pugh*, 99*th U. S. Rep.*, 271.)

(*Xenniea First National Bank vs. Stuart*, 114 *U. S.*, 224.)

(*U. S. vs. Ross*, 92 *U. S.*, 28.)

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine and imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

(*Revised Statutes of the U. S., Sec. 725, p. 137.*)

It is clear from the record in this cause that the charges of contempt did not occur in the presence of this Honorable Court, or so near thereto as to obstruct the administration of justice, that it was not the misbehavior of an officer of the Honorable Court, or a party or witness, and we insist it is clearly shown from the proof that these defendants in no way interfered, or attempted to do so, or intended to in any way interfere with the process of this Honorable Court, or

to commit any contempt of its order, as is shown by the proof in this record.

We insist that a contempt is a question of intent and that defendants having not only purged themselves by their answers, but also by their proof, and having, as hereinbefore shown, disproven each of the charges as contained in the information, and shown that they are not guilty. We, therefore, respectfully but earnestly insist that the court should either grant a rehearing of the case or reverse its former holding, that is the holding of the majority of the court, and discharge these defendants, as the evidence in the case disproves the charges contained in the information *in toto*.

We further insist that this Honorable Court erred in assuming jurisdiction of this case, as defendant Johnson was not in the custody or control of the Federal Court, but a State prisoner.

It is well settled that the Court having possession of a prisoner cannot be deprived of the right to deal with him until its jurisdiction is exhausted. No other Court has a right to interfere with his custody. The State Courts not having exhausted their jurisdiction and there being no Federal question raised during the trial of the cause that would give the United States Court jurisdiction, without which this Honorable Court could not have jurisdiction, without which any order or decree it might make would be void.

(*Ex parte Johnson*, 167 *U. S.*, 120.)

In *Leper vs. Texas* this Honorable Court, Mr. Chief Justice Fuller delivering an opinion of the Court, said:

> "To give this court jurisdiction *it must appear on the record that such title, right, privilege or immunity was specially set up or claimed at the proper time and in the proper way.*"

Referring to other decisions of this Honorable Court:

So far as the record in this cause shows, no right, privilege, immunity in respect to these matters was set up or claimed by defendant Johnson, as required by Section 709 R. S., and such we insist is true of this case at bar, without which this court could have no jurisdiction.

(*In re McNulty vs. Cal.*, 149 *U. S.*, 645.)

(110 *U. S.*, 516.)

(*Duncan vs. Mo.*, 152 *U. S.*, 377.)

(*In re Roberts, petitioner*, 156 *U. S.*, 183-5.)

In re Roberts, petitioner, this Honorable Court through Chief Justice Fuller, says: "The question of the sufficiency of the indictment is not a Federal question," so we insist in the case at bar the finding of the jury, the sentence and judgment of the court, condemning the prisoner to be executed, is not a Federal question, and that, therefore, upon the authority of the cases last above referred to this Honorable Court is without jurisdiction in this case.

Before this Honorable Court can take jurisdiction and even determine whether a Federal question is involved this Federal question must have been raised or presented in some

way and passed upon by the State Court.

(See authorities heretofore referred to on this question.)

(*In re Lemon*, 150 *U. S.*, 393-398.)

(*M. C. & L. R. Co. vs. Swan*, 111 *U. S.*, 379.)

(*Kentucky vs. Powers*, 201 *U. S. Report*, 1.)

In the case of *M. C. & L. R. Co. vs. Swan*, 11 *U. S.*, 379, this Honorable Court said:

> "The rule springing from the nature and limit of the judicial power of the United States is inflexible and without exception, which requires of this Court, of its own motion, to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal the first and fundamental question is that of jurisdiction, and then of the Court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect of the relation of the parties to it."

This principle has been again and again affirmed.

(*Great Southern Fireproof Hotel Co. vs. Jones*, 177 *U. S.*, 449-453, and authorities there cited.)

(*Ky. vs. Powers*, 201 *U. S.*, 35-36.)

It is important to notice that there was no claim in the case at bar that either the Constitution or Laws of Tennessee that denied the civil right of colored people, or their enforcing the equal protection of the law. The Constitution and Laws of the State of Tennessee makes no distinction on ac-

count of race, color or condition. The act gives the right of removal only to persons who are denied or cannot enforce, in the judicial tribunal of the State his equal civil right, and this is to appear, or in other words this question must be raised and denied by the State Court.

(*Neal vs. Delaware*, 103 *U. S.*, 370-386.)

(*Bush vs. Kentucky*, 107 *U. S.*, 110-116.)

(*Gibson vs. Miss.*, 162 *U. S.*, 565-581-584.)

(*Smith vs. Miss.*, 162 *U. S.*, 592-600.)

In *ex parte Watkins* (3 Peter, p. 201-2), this Honorable Court, through Mr. Chief Justice Marshall, says:

> "A judgment in its nature concludes the subject on which it is rendered and pronounces the law of the case. The judgment of a court of record whose jurisdiction is final is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other Courts. It puts an end to inquiry concerning the fact by deciding it. We have no power to examine the proceedings on a writ of error, and it would be strange if under a color of writ to liberate an individual from unlawful imprisonment we could substantially reverse a judgment which the law has placed beyond our control. An imprisonment under a judgment cannot be unlawful unless that judgment be an absolute nullity, and it is not a nullity if the Court has general jurisdiction of the subject, although it should be erroneous."

The criminal court of Hamilton County, Tennessee, is a court of record, as is also the Circuit and Supreme Courts of the State.

In the case of *ex parte Watkins*, above referred to, the Court says: "To determine whether the offense charged in the indictment be legally punishable or not, is among the most unquestionable of its powers and duties."

The declaration that there are Federal questions involved in the petition, (as in the case at bar) for writ of *habeas corpus*, as shown to be untrue by the record, or if the Federal questions sought to be determined were not made before or on the trial of the cause, but only presented in the petition, they come too late and this Honorable Court has no authority to inquire into the judgment of the Court of criminal jurisdiction.

It is too late to raise the Federal question by statement in the writ of error and petition for citation.

(*Hulburt vs. City of Chicago*, 202 *U. S.*, 275.)

(*Rawlings vs. Ga.*, 201 *U. S.*, 638.)

The petition for writ of *habeas corpus* in the case at bar fails to make out a case entitling petitioner to a discharge or relief, as the grounds stated therein are absolutely frivolous, without foundation and shown to be untrue by the record; and it also shows that no Federal question was presented to the trial court. Therefore, petitioner could not be discharged, and this Court have no jurisdiction over the matter. The Federal question must be raised before or on the trial of the cause in the State Court and cannot be raised by petition.

(*Storti vs. Mass.*, 183 *U. S.*, 138.)
(*Bradley vs. Lightcap, No.* 3, 195 *U. S.*, 25.)
(*Bonin vs. Gulf Co.*, 198 *U. S.*, 115-117.)
(*Lampasas vs. Bell*, 190 *U. S.*, 276-282.)
(*Muse vs. Arlington Hotel Co.*, 168 *U. S.*, 430.)
(*Ainsboro vs. U. S.*, 159 *U. S.*, 695-7.)
(*Chicago & N. W. Ry. vs. Chicago*, 164 *U. S.*)

We might and could refer to many other authorities on the same line, but we deem it unnecessary and a waste of time to further cite authorities on these questions.

SUMMARY.

I.

For defendants Shipp and Gibson, we respectfully but earnestly insist, as hereinbefore set forth, that the Government has failed to make out by competent and relevant proof, or by the weight of proof, the charges contained in the information, or any one of them, but on the contrary, as we insist, the proof negatives every charge contained in the information. Not only that, but it shows that these defendants were not informed of the likelihood of a mob as alleged. It even goes further and shows that there was no indication or evidence whatever that would indicate or lead these defendants to suspect that there was likelihood of a mob occurring the night on which he was mobbed.

II.

The charge contained in the information that these defendants Shipp and Gibson, or defendant Shipp, or either of them, conspired with each other or anyone else, by which the usual guard at the jail was to be removed, in order to make it more easy for the mob to carry out its purpose, is not only denied by defendants, but is proven from the proof in the record to be absolutely untrue, and there is no proof offered by the Government sustaining said allegation in the information; or at least no sufficient proof, especially so when considered in connection with the denials of defendants and the proof sustaining their side of the question.

III.

There is not, as before stated, a syllable of proof in this entire immense record even tending to show that there was a conspiracy entered into by the defendant Shipp, sheriff, or any of his deputies to withdraw the guards or for any other purpose looking to the lynching of Johnson.

IV.

We respectfully call to the attention of this Honorable Court, the fact that this record shows that the defendants Shipp and Gibson are men of good character; that their character is shown by many witnesses to be of the highest, and especially is this true of defendant Shipp. Not a man

in Chattanooga stands better as a man, a citizen and an officer than he does, and not one syllable of evidence to the contrary. These men are now old. They have lived honest and correct lives as citizens of this community since 1874. Defendant Shipp has held honorable positions before that of Sheriff and has always discharged faithfully the duties encumbered upon him as an official and as a citizen of this Government. He is shown by the proof to be a man of the highest character; a man of honor and of truth, a man in favor of law and order. These things all weigh in his favor and against his guilt. Then, in addition the record in this cause shows that he, as an official, as the Sheriff of Hamilton County, with the lights before him, as detailed by the proof in this record, did what he believed to be to the best interest for the protection of the prisoner Ed. Johnson from the time Johnson was arrested on up until the lynching actually took place. It is shown by the proof that there was nothing that occurred at that time to indicate or to put the Sheriff and his deputies upon notice that a lynching might be expected at that time, but on the contrary the record shows that it was not to be expected.

V.

We, therefore, insist that if this or these officers did not have the information and that there was nothing brought to their knowledge that would lead them to suspect a lynching,

that they certainly are not guilty of any of the charges contained in the information, and no adverse criticism of his action should or can justly be made upon his conduct at that time.

VI.

I am here before this Honorable Court, not simply as the attorney of these defendants, but as the friend in arms of these old Confederate soldiers, with the view and for the purpose of aiding in so far as my humble ability can do so, this Honorable Court in reaching a correct conclusion and to see that it does not punish innocent parties, if I can show it that these parties are not guilty, as I believe I have done from the record, and that they be discharged.

VII.

In saying this I desire to state further that I am not a paid lawyer in this case, but the friend and lawyer of these old comrades, without the expectation or hope of any reward whatever except that if I can show to the Honorable Court, as I believe the record authorizes, that these parties are not guilty of the charges made against them, I will have accomplished all that I desire in this case, and it will be my only reward or compensation.

VIII.

I, therefore, most respectfully but most earnestly insist that the Honorable Court has unwittingly or in overlooking

some of the facts presented by this immense record, committed the errors as hereinbefore set forth, and that a new trial should be granted these defendants, or at least a review of this Honorable Court should be had and the defendants discharged.

All of which is most respectfully submitted.

M. H. CLIFT,
Attorney for Defendants Shipp and Gibson.

JUDSON HARMON,
ROBERT PRITCHARD,
WILLIAM D. SPEARS,
ROBERT B. COOKE,
JAMES J. LYNCH,
Associate Counsel.

Supreme Court of the United States.

No. 12, Original.—October Term, 1906.

The United States of America
vs.
John F. Shipp et al.
} Information in Contempt.

[December 24, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an information charging a contempt of this Court and is to the following effect. On February 11, 1906, one Johnson, a colored man, was convicted of rape upon a white woman, in a Criminal Court of Hamilton County, in the State of Tennessee, and was sentenced to death. On March 3 he presented a petition for a writ of *habeas corpus* to the United States Circuit Court, setting up, among other things, that all negroes had been excluded, illegally, from the grand and petit juries; that his counsel had been deterred from pleading that fact or challenging the array on that ground, and also from asking for a change of venue to secure an impartial trial, or for a continuance to allow the excitement to subside, by the fear and danger of mob violence; and that a motion for a new trial and an appeal were prevented by the same fear. For these and other reasons it was alleged that he was deprived of various constitutional rights, and was about to be deprived of his life without due process of law.

On March 10, after a hearing upon evidence, the petition was denied, and it was ordered that the petitioner be remanded to the custody of the sheriff of Hamilton County, to be detained by him in his custody for a period of ten days, in which to enable the petitioner to prosecute an appeal, and in default of the prosecution of the appeal within that time to be then further proceeded with by the State Court under its sentence. On March 17 an appeal to this Court was allowed by Mr. Justice Harlan. On the following Monday, March 19, a similar order was made by this Court, and it was ordered further "that all proceedings against the appellant be stayed, and the custody of said appellant be retained pending this appeal."

The sheriff of Hamilton County was notified by telegraph of the order, receiving the news before six o'clock on the same day. The evening papers of Chattanooga published a full account of what this Court had done. And it is alleged that the sheriff and his deputies were informed, and had reason to believe, that an attempt would be made that night by a mob

to murder the prisoner. Nevertheless, if the allegations be true, the sheriff early in the evening withdrew the customary guard from the jail, and left only the night jailer in charge. Subsequently, it is alleged, the sheriff and the other defendants, with many others unknown, conspired to break into the jail for the purpose of lynching and murdering Johnson, with intent to show contempt for the order of this Court, and for the purpose of preventing it from hearing the appeal and Johnson from exercising his rights. In furtherance of this conspiracy a mob, including the defendants, except the sheriff Shipp and the night jailer Gibson, broke into the jail, took Johnson out and hanged him, the sheriff and Gibson pretending to do their duty, but really sympathizing with and abetting the mob. The final acts as well as the conspiracy are alleged as a contempt.

The defendants have appeared and answered, and certain preliminary questions of law have been argued which it is convenient and just to have settled at the outset before any further steps are taken. The first question, naturally, is that of the jurisdiction of this Court. The jurisdiction to punish for a contempt is not denied as a general abstract proposition, as, of course, it could not be with success. *Ex parte Robinson*, 19 Wall. 505, 510. *Ex parte Terry*, 128 U. S. 289, 302, 303. But it is argued that the Circuit Court had no jurisdiction in the *habeas corpus* case, unless Johnson was in custody in violation of the Constitution, Rev. Sts. § 753, and that the appellate jurisdiction of this Court was dependent on the Act of March 3, 1891, c. 517, § 5, (26 Stat. 827,) *Ex parte Lennon*, 150 U. S. 393, and by that Act did not exist unless the case involved 'the construction or application of the Constitution of the United States.' If the case did not involve the application of the Constitution, otherwise than by way of pretense, it is said that this Court was without jurisdiction, and that its order might be contemned with impunity. And it is urged that an inspection of the evidence before the Circuit Court, if not the face of the petition, shows that the ground alleged for the writ was only a pretense.

We regard this argument as unsound. It has been held, it is true, that orders made by a Court having no jurisdiction to make them may be disregarded without liability to process for contempt. *Ex parte Sawyer*, 124 U. S. 200. *Ex parte Fisk*, 113 U. S. 713. *Ex parte Rowland*, 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this Court had no jurisdiction of the appeal, this Court, and this Court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan*, 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions

and the subject of the petition, just as the State Court was bound to refrain from further proceedings until the same time. Rev. Sts. § 766. Act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it. Of course the provision of Rev. Sts. § 766, that until final judgment on the appeal further proceedings in the State Court against the prisoner shall be deemed void, applies to every case. There is no implied exception if the final judgment shall happen to be that the writ should not have issued or that the appeal should be dismissed.

It is proper that we should add that we are unable to agree with the premises upon which the conclusion just denied is based. We cannot regard the grounds upon which the petition for *habeas corpus* was presented as frivolous or a mere pretense. The murder of the petitioner has made it impossible to decide that case, and what we have said makes it unnecessary to pass upon it as a preliminary to deciding the question before us. Therefore we shall say no more than that it does not appear to us clear that the subject matter of the petition was beyond the jurisdiction of the Circuit Court, and that, in our opinion, the facts that might have been found would have required the gravest and most anxious consideration before the petition could have been denied.

Another general question is to be answered at this time. The defendants severally have denied under oath in their answer that they had anything to do with the murder. It is urged that the sworn answers are conclusive, that if they are false the parties may be prosecuted for perjury, but that in this proceeding they are to be tried, if they so elect, simply by their oaths. It has been suggested that the Court is a party and therefore leaves the fact to be decided by the defendant. But this is a mere afterthought to explain something not understood. The Court is not a party. There is nothing that affects the Judges in their own persons. Their concern is only that the law should be obeyed and enforced, and their interest is no other than that they represent in every case. On this occasion we shall not go into the history of the notion. It may be that it was an intrusion or perversion of the canon law, as is suggested by the propounding of interrogatories and the very phrase, purgation by oath; (*juramentum purgatorium*,). If so, it is a fragment of a system of proof which does not prevail in theory or as a whole, and the reason why it has not disappeared perhaps may be found in the rarity with which contempts occur. It may be that even now, if the sole question were the intent of an ambiguous act, the proposition would apply. But in this case it is a question of personal presence and overt acts. If the presence and the acts should be proved there would be little room for the disavowal of intent. And when the acts alleged consist in taking part in a murder it cannot be admitted that a general denial and affidavit should

dispose of the case. The outward facts are matters known to many and they will be ascertained by testimony in the usual way.—The question was left open in *Ex parte Savin*, 131 U. S. 267, with a visible leaning toward the conclusion to which we come, and that conclusion has been adopted by State Courts in decisions entitled to respect. *Huntington* v. *McMahon*, 48 Conn. 174, 200, 201. *State* v. *Matthews*, 37 N. H. 450, 455. *Bates's Case*, 55 N. H. 325, 327. *Matter of Snyder*, 103 N. Y. 178, 181. *Crow* v. *State*, 24 Tex. 12, 14. *State* v. *Harper's Ferry Bridge Co.*, 16 W. Va. 864, 873. See *Wartman* v. *Wartman*, Taney, 362, 370. *Cartwright's Case*, 114 Mass. 230. *Eilenbecker* v. *Plymouth County*, 134 U. S. 31. Whether or not Rev. Sts. § 725 applies to this Court, it embodies the law so far as it goes. We see no reason for emasculating the power given by that section, and making it so nearly futile as it would be if it were construed to mean that all contemnors willing to run the slight risk of a conviction for perjury can escape.

The question was touched, in argument, whether the acts charged constitute a contempt. We are of opinion that they do, and that their character does not depend upon a nice inquiry, whether, after the order made by this Court, the sheriff was to be regarded as bailee of the United States or still held the prisoner in the name of the State alone. Either way, the order suspended further proceedings by the State against the prisoner and required that he should be forthcoming to abide the further order of this Court. It may be found that what created the mob and led to the crime was the unwillingness of its members to submit to the delay required for the trial of the appeal. From that to the intent to prevent that delay and the hearing of the appeal is a short step. If that step is taken the contempt is proved.

These preliminaries being settled the trial of the case will proceed.

Mr. Justice MOODY took no part in the decision.

True copy.

Test:

Clerk Supreme Court U. S.

Supreme Court of the United States.

No. 5, Original.—October Term, 1908.

The United States of America, Complainant,
vs.
Joseph F. Shipp et al.
} Information in contempt.

[May 24, 1909.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was an information filed by the Attorney General of the United States against Joseph F. Shipp and twenty-six other defendants, which was dismissed as to eighteen of them and heard as to defendants Shipp, Galloway, Gibson, Nolan, Williams, Justice, Padgett, Mayse and Ward.

The information charged, in substance, that February 11, 1906, Ed Johnson, a negro, was convicted of rape by the criminal court of Hamilton County, Tenn., held in Chattanooga, and was sentenced to death; that on March 3, following, Johnson filed a petition for the writ of *habeas corpus* in the United States Circuit Court, sitting in Tennessee, alleging that in the trial he had been deprived of constitutional rights; that on March 10 the petition was dismissed and the writ denied, petitioner being remanded to the sheriff of Hamilton County to be detained in his custody for ten days, in which to enable petitioner to prosecute an appeal, and in default of such appeal to be further proceeded with by the State court under its sentence; that on March 17 Mr. Justice Harlan, of the United States Supreme Court, allowed an appeal from the decision of the Circuit Court, and on March 19 an order was made by the Supreme Court allowing said appeal; that defendant Shipp, sheriff of Hamilton County, then was at once notified by telegraph of said order, which stayed all proceedings against Johnson, and required Shipp to retain custody of Johnson pending determination of the appeal; that before 6 o'clock in the evening of March 19 a full account of this action of the Supreme Court was published and circulated in the evening papers in the city of Chattanooga; that defendant Shipp was the sheriff of Hamilton County and defendants Matthew Galloway and Jeremiah Gibson, among others, were his deputies; that the deputies as well as the sheriff were fully advised of the action of the Supreme Court, and were informed and had every reason to believe, from current reports and rumors conveyed to them, that an attempt would be made on the evening of the 19th or early in

the morning of the 20th, by a mob composed of a large number of armed men, to force an entrance into the county jail for the purpose of taking Johnson therefrom and lynching him; that notwithstanding said information and said reports the sheriff withdrew from the jail early in the evening of the 19th the usual and customary guard, and left in charge thereof only the night jailer—defendant Gibson—and committed other acts and did other things evincing a disposition on the part of said sheriff to render it less difficult and less dangerous for the mob to prosecute and carry into effect its unlawful design and purpose of lynching Johnson; that about 9 o'clock in the evening of said March 19 defendants and others conspired to break into the jail for the purpose of taking Johnson therefrom and lynching him, with intent to show their contempt and disregard for the above-mentioned order of this court, and prevent it from hearing the appeal of Johnson; that pursuant to this conspiracy and in order to show their contempt and disregard for said order of this court, between 9 and 12 o'clock in the evening of said March 19, at Chattanooga, Tenn., defendants, excepting Shipp and Gibson, assembled with others, broke into the jail, took Johnson out by force, and lynched him; that Gibson was the only officer at the jail when the mob broke in, and that while the mob was in possession of the jail defendant Shipp arrived, but made no effort to prevent the mob from taking Johnson from the jail; that defendants Shipp and Gibson were in sympathy with the mob while pretending to perform their official duty of protecting Johnson, and that they aided and abetted the mob in prosecution and performance of the lynching; that all of these acts were committed by defendants with the intent upon their part to utterly disregard the above-mentioned order of this court and to prevent the court from hearing Johnson's appeal.

The answers on questions of fact consisted of a general denial and, except in the cases of Shipp, Gibson and Williams, the setting up of an alibi by each defendant. Williams admits that he was at the jail a short time before and at the time Johnson was taken from it by the mob, and that he followed the mob and witnessed the lynching, but denies participating in the acts of the mob.

Certain preliminary questions of law were raised by defendants and passed upon by the court. 203 U. S. 563. It was held that the complaint sufficiently set forth a contempt of this court; that it was unnecessary for the purposes of this proceeding to determine whether or not the Circuit Court had jurisdiction of the *habeas corpus* proceedings or whether this court had jurisdiction to entertain the appeal, as those were questions for this court to determine and for no other tribunal; and that the answers of the defendants, under oath, disavowing intent did not purge them.

The case then came on to be heard on the question whether the allegations of the information were made out.

The following is a sufficient *resumé* of the facts admitted or undisputed:

January 23, 1906, a rape was committed upon a white woman in or near Chattanooga, Hamilton County, Tenn.

At that time and at all times hereinafter mentioned defendant Shipp was the duly elected, qualified and acting sheriff of Hamilton County, Tenn., and as such sheriff had and exercised full charge and control of the county jail located in Chattanooga, and was the legal custodian under the laws of Tennessee of all persons duly committed in said county under the laws of the State to confinement and imprisonment within the jail, and the defendants Matthew Galloway and Jeremiah Gibson were duly appointed, qualified and acting deputy sheriffs under Shipp.

January 25 Shipp and his deputies arrested Ed Johnson, a negro, in or near Chattanooga, charged with the crime.

Late in the afternoon of the same day Johnson was, by order of the judge of the State criminal court, taken by Sheriff Shipp to Dayton and from there to Nashville, where he was kept until the day of his trial, February 6. Johnson was removed and kept away from Chattanooga during this period because of fear that he would be lynched.

The night of January 25 a large mob attacked the jail at Chattanooga, where Johnson was supposed to be confined.

Three of Shipp's deputies were at the jail, and, with the assistance given them by the police, the chairman of the safety committee, and others, prevented the taking of any prisoners from the jail.

At the suggestion of the deputies the mob appointed a committee to go through the jail and satisfy itself that Johnson was not there.

Even after this committee had reported that the persons whom the mob sought were not in the jail, it was necessary to use force to put the mob out of the jail yard.

The dangerous character of this committee and the mob and their anger at not being able to find Johnson is shown by the testimony of the prosecuting officer for Hamilton County; the judge of the criminal court of that county; and defendant Galloway.

One other night, about the same time, the officers thought there was to be a mob. The militia was called out twice about that time to protect the jail against a mob which sought to take Johnson's life.

January 26 a special grand jury was convened, and the next day indicted Johnson for the crime above referred to.

February 6 Johnson was brought to Chattanooga from Nashville and his trial commenced that day in the criminal court of Hamilton County. February 9 he was convicted and sentenced to death.

The date of execution was originally fixed as March 13, but on or about March 11 was changed by the governor to March 20.

No appeal to the Supreme Court of the State was taken by the lawyers appointed by the court to defend Johnson.

Two daily papers were published in Chattanooga—The Times, a morning paper, and The News, an evening paper, both having a large circulation. Three competent and leading attorneys had been appointed by the court to defend Johnson, and one of them made a statement, which was published in The Chattanooga Times of February 10, as to the reasons why an appeal was not prosecuted in Johnson's behalf. He depicts the mental strain that he and his associates had been under, and the weight of the burden of the responsibility upon them. He says that when the jury brought in a verdict of guilty "we, as the attorneys, had to settle the question whether the case would be appealed to the Supreme Court." He asked the trial judge to appoint three other lawyers to counsel and advise with them and help to share the responsibility, and three well-known lawyers were designated, who met with the three counsel for the petitioner and considered the matter.

"We discussed the recent mob uprising and the state of unrest in the community. It was the judgment of all present that the life of the defendant, even if the wrong man, could not be saved; that an appeal would so inflame the public that the jail would be attacked and perhaps other prisoners executed by violence. In the opinion of all of us a case was presented where the defendant, now that he had been convicted by a jury, must die by the judgment of the law, or else, if his case were appealed, he would die by the act of the uprising of the people.

* * * * * *

"In view of all the conditions, it was the unanimous vote that the law ought to be allowed to take its course if Judge McReynolds were satisfied with the verdict, and if he were to approve it and pass judgment of death on it."

He then relates an interview had thereupon with the accused. His right of appeal was explained to him, "that the Supreme Court met in September next; that an appeal would stay the judgment until that time; that we did not see any reasonable ground to suppose that the Supreme Court would reverse the sentence, and that we feared an appeal would cause mob violence against him."

* * * * * *

"Without giving all that occurred at the jail, he said to us that he did not want to die by a mob; that he would do as we thought best. He said he would go over to the court house and tell the judge that he did not have anything more to say than that he was not the guilty man.

"I want the people to know that the foregoing facts moved us to allow the law to take its course under the verdict of the jury and the judgment of Judge McReynolds. Six lawyers settled it in this way after the calmest reflection and under the keenest sense of the great responsibility.

"In view of the awfulness of the crime committed, I beg that the sheriff and every peace officer of Chattanooga and Hamilton County will still try to get all possible further light, and if any person anywhere knows anything whatever tending to show or reflect light on either the guilt or innocence of the defendant, I beg that such person make known all that he may know to us or to Attorney General Whitaker."

On the afternoon Johnson was convicted he was secretly taken from Chattanooga to Knoxville because of fear of mob violence to him.

From the time the crime was committed until after Johnson's trial the people of Chattanooga were greatly excited over the crime and Johnson's alleged connection with it, and there was great apprehension on the part of the people as well as the officers that attempts would be made to lynch Johnson.

It was because of this intense excitement and the feeling that speedy execution of Johnson might prevent his being lynched that Johnson was so quickly indicted and tried.

While the trial was in progress extra deputies were sworn in and an unusual number of guards were kept around the court house and at the jail at night.

Guns to be used in protecting the jail against a mob were purchased.

March 3 Johnson filed a petition for a writ of *habeas corpus* in the United States Circuit Court for the Northern Division of the Eastern District of Tennessee.

March 10, 1906, the petition was denied, the Circuit Court ordering that Johnson be remanded to the custody of the sheriff of Hamilton County, Tenn., to be detained by him for ten days in which to enable petitioner to prosecute an appeal from said order, and in default of the prosecution of said appeal within that time to be then further proceeded with under the sentence.

This order was made public through the press.

Johnson was at Knoxville, where he had been kept since his conviction, for hearing upon his petition, and was taken back to Chattanooga, March 11.

Saturday, March 17, application was duly presented by Johnson to Mr. Justice Harlan of the Supreme Court of the United States, (Circuit Justice of the Sixth Circuit,) at Washington, asking that an appeal be allowed to that court from the order of the Circuit Court, denying Johnson's petition for a writ of *habeas corpus*. This appeal was allowed by Mr. Justice Harlan on the same day.

March 18, The Chattanooga Times published notice that application for said appeal had been made.

The same day Judge Clark, of the United States Circuit Court, received a telegram from Mr. Justice Harlan, which was communicated to

Sheriff Shipp on the afternoon of that day, that he had allowed appeal to accused in *habeas corpus* case of Ed Johnson; that the transcript would be filed the next day, and motion also be made by Johnson's counsel for formal allowance of appeal by the Supreme Court.

March 19, The Chattanooga Times published news of the allowance of the appeal by Mr. Justice Harlan, in which it said, among other things:

"From these authorities it was learned that the granting of an appeal in a case like this acted to supersede all process in the State courts. No stay is necessary, according to the authorities, and the statute is self-operative. Pending a decision of the appeal there can be no execution by any State authority."

March 19 an order was made by the United States Supreme Court, allowing an appeal to that court from the final order of the Circuit Court denying petition for writ of *habeas corpus*, and directing that all proceedings against the appellant be stayed, and that the custody of appellant be retained pending the appeal.

About 1 o'clock in the afternoon of said March 19 the following telegram was delivered to a telegraph company for transmittal to the addressee:

"Washington, March 19, 1906.

To Sheriff of Hamilton County, Tenn., Chattanooga, Tenn.

"Supreme Court of United States has allowed Ed Johnson appeal from Judge Clark's order, and directed all further proceedings stayed, and custody of Johnson retained pending appeal here. See section 766, Revised Statutes of the United States.

JAMES H. MCKENNEY,
Clerk Supreme Court, U. S."

This was received by the telegraph office at Chattanooga about 3.30 on the same afternoon and delivered between 4 and 5 o'clock on that afternoon.

About 2 o'clock on the afternoon of the 19th Judge McReynolds told Sheriff Shipp that the Supreme Court had granted a stay in the Johnson case, and that thereafter Johnson was a Federal prisoner.

Between 2 and 4 of the afternoon of March 19 the following telegram was received by Judge Clark, and by his secretary communicated to Sheriff Shipp, at the jail, about 5 o'clock that afternoon, with a copy of the statute therein referred to:

"Washington, D. C., March 19, 1906.

Hon. C. D. Clark, United States Court, Chattanooga, Tenn.

"Court has just allowed appeal in Johnson's case, and ordered all further proceedings against him delayed and custody retained pending appeal

here. It will be well to call attention of State officers immediately to section 766 of Revised Statutes.

JOHN M. HARLAN."

The statute referred to reads (including the proviso added March 3, 1893):

"Pending the proceedings on appeal in the cases mentioned in the three preceding sections and until final judgment therein, and after final judgment of discharge, any proceedings against the person imprisoned or confined or restrained of his liberty, in any State, court, or by or under the authority of any State, for any matter so heard and determined, or in process of being heard and determined, under such writ of *habeas corpus*, shall be deemed null and void.

"*Provided*, That no such appeal shall be had or allowed after six months from the date of the judgment or order complained of."

Shipp understood that thereupon Johnson was held as a Federal prisoner.

There was published and circulated in Chattanooga, in the evening paper published in that city, on March 19, about 4 o'clock, an account of said action of the Supreme Court, under the headlines, "An Appeal is Allowed. Ed Johnson Will Not Hang To-morrow." This reads, in part:

"The gallows in the Hamilton County jail has again been disappointed in the case of Ed Johnson, convicted by the State courts of rape and sentenced to death. The hanging will not take place to-morrow morning, as scheduled."

The news of the action of the court was also posted on a newspaper bulletin.

After hearing of the stay Shipp says that he made no effort and gave no orders to have deputies or others guard the jail, but left the night jailer, defendant Gibson, there alone.

The county jail at Chattanooga, in which Johnson was confined on the 19th, consisted of four stories, two above ground and two below ground. Entrance to the jail was on the third floor, counting from the bottom. In the front part of the building, on this third floor, was an office section. An iron door led from this section into the jail proper; that is, the protected part of the building, where the prisoners were kept. Johnson was confined on the top floor. To reach him from outside the jail it was necessary to go through the offices, through the iron door between the offices and the jail proper, up a flight of stairs, through a steel-barred door, right behind which was a circular door consisting of heavy steel bars several inches apart, which revolved so as to make a passage. Passing through this circular door one came into a corridor around which were cells having iron doors which could be locked. It was in one of these cells that Johnson was confined.

The jail was located in a populous neighborhood and there were houses around it.

In the evening of the 19th a white male prisoner was removed from the upper floor of the county jail in Chattanooga, leaving only Johnson and a white woman on that floor.

This same man had been removed in the same way at the time of the first attempt to lynch Johnson.

About half-past 8 or 9 that night a number of men entered the jail and went directly and without resistance to the door leading to Johnson's corridor. There is a conflict of evidence as to whether the door leading from the offices to the jail proper was locked during the evening, but if it was locked when the mob came it was easily broken down.

Gibson was the only officer there at the time, and he was on the top floor with Johnson.

Keys were obtained from him without resistance, but, as the lock on the door leading to the corridor where Johnson's cell was located had been broken by a member of the mob, the keys would not work.

The mob, with sledge and ax, then began to break the bolts on the corridor door.

About twelve men were actively engaged in breaking down the door and in all subsequent events of the lynching. Some of these men were masked.

A crowd of spectators began to gather around the jail soon after the mob reached it, and continued to gather in and around the jail until Johnson was taken out. This crowd was variously estimated from a few to 150 or more.

It took over an hour to break the bolts on the corridor door.

Two men then went through the circular door and in a few minutes brought Johnson out with his arms tied with a rope.

When Johnson was thus brought out, the dozen men or so composing the mob grabbed him.

This mob took Johnson from the jail to the county bridge over the Tennessee River, which was about six blocks from the jail.

Johnson was taken from the jail a little after 10 o'clock.

From the foregoing it is apparent that there was no interference or attempted interference of any consequence with the mob before it left the jail, and there was none after it left.

The crowd which had gathered around the jail followed the mob down to the bridge.

When the bridge was reached the mob took Johnson a little beyond an arc light, put a rope around his neck, threw it over a beam, and swung him up.

At the bridge the mob actively engaged in lynching Johnson were close to him and separated by a space from the crowd of spectators.

The first time Johnson was swung up, the rope broke or slipped and he fell. He was swung up a second time and shot. After some shots were fired, Johnson again fell, and while lying on the ground was again shot. It was about ten minutes after the mob had reached the bridge until Johnson was killed.

It is apparent that a dangerous portion of the community was seized with the awful thirst for blood which only killing can quench, and that considerations of law and order were swept away in the overwhelming flood. The mob was, however, willing at the first attempt to accept prompt administration of the death penalty adjudged at a trial conducted according to judicial forms, in lieu of execution by lawless violence, but delay by appeal, or writ of error, or *habeas corpus* was not to be tolerated.

Under then existing statutory provisions appeals might be taken to this court from final decisions of the Circuit Courts in *habeas corpus* in cases, among others, where the applicant for the writ is alleged to be restrained of his liberty in violation of the Constitution or of some law or treaty of the United States, and if the restraint was by any State court, or by or under the authority of any State, further proceedings could not be had against him pending the appeal. Rev. Stat. §§ 763, 764, 766; Act of March 3, 1885, c. 353, 23 Stat. 437.

In this instance an appeal was granted by this court, and proceedings specifically ordered to be stayed. The persons who hung and shot this man were so impatient for his blood that they utterly disregarded the act of Congress as well as the order of this court.

As heretofore stated, the defendants to the information remaining to be dealt with on the facts are Shipp, Galloway, Gibson, Nolan, Williams, Justice, Padgett, Mayse and Ward. Of these, Shipp was the sheriff and Galloway and Gibson two of his deputies. The others are charged with active participation in the lynching. It is contended that the lynching was not expected to occur on the 19th, and the evidence of the United States district judge, and some clergymen and others was given to the effect that they had no such anticipation. The event showed that they were wrong, and it is plain the danger might be very great and yet remain unperceived by the adherents of order and peace.

It will be remembered that the crime was committed on January 23, and Johnson was arrested January 25. That night a mob attacked the jail in which he was supposed to be and ascertained that he was not there. Johnson was kept in Nashville from that day until his trial commenced, February 6. On his conviction, February 9, he was taken away from Chattanooga and kept away until March 11, the day after his petition for *habeas corpus* was denied.

It must be admitted that intense feeling against Johnson existed from the

time of the commission of the crime until after his conviction, and that this feeling frequently manifested itself, although Johnson was not in Chattanooga from the time of his arrest until his trial began. The intensity of this feeling and the great apprehension of the officers of mob violence is shown in the testimony of defendants' own witnesses, describing the precautions and secrecy exercised by them in the way they took Johnson in and out of Chattanooga, as well as by the fact that they kept him away from Chattanooga from the day of his arrest until March 11, two days before the time set for his execution, with the exception of the three days he was there attending his trial. Undoubtedly the public believed that Johnson would be executed on March 13, until the reprieve to March 20 was granted on March 11; and after the petition for *habeas corpus* was denied by the Circuit Court believed that Johnson would then be executed on the 20th.

Sheriff Shipp testifies that inflammatory reports of the *habeas corpus* proceedings and efforts to appeal the case to the Supreme Court were sent out by the newspapers on March 11, and because of that he had fear of mob violence to Johnson. The efforts made by Johnson's attorneys to obtain an appeal were kept before the public by the newspapers.

March 16 The Chattanooga Times published a statement that a negro attorney had gone to Washington to obtain an appeal from the order denying the petition for *habeas corpus.* The article said:

"People here are decidedly anxious as to whether Johnson is to suffer death for his crime next Monday or escape for an indefinite period by reason of intervention of the court at Washington. More unrest on the subject exists than was anticipated when Johnson was brought back to the county.

* * * * * *

"During the recent days of suspense as to his execution the desire for information has been feverish, and telephones at localities where information has been thought to be obtainable have been kept busy by inquirers."

In The News, published the evening of March 19, there was an editorial reviewing the local proceedings, which concluded:

"All of this delay is aggravating to the community. The people of Chattanooga believe that Johnson is guilty and that he ought to suffer the penalty of the law as speedily as possible. If by legal technicality the case is prolonged and the culprit finally escapes, there will be no use to plead with a mob here if another such crime is committed. Such delays are largely responsible for mob violence all over the country."

The assertions that mob violence was not expected and that there was no occasion for providing more than the usual guard of one man for the jail in Chattanooga, are quite unreasonable and inconsistent with statements made by Sheriff Shipp and his deputies that they were looking for a mob on the

next day. Officers and others were heard to say that they expected a mob would attempt to lynch Johnson on the 20th. There does not seem to be any foundation for the belief that the mob would be considerate enough to wait until the 20th. If the officers expected a mob at all, as they say that they did, they cannot shield themselves behind the statement that they expected it on the 20th, the day that had been appointed for Johnson to die, and did not expect it the night before. But no orders had been given and nothing had been done up to half-past eight o'clock on the night of the 19th to protect Johnson from the mob which was, according to their present statements, expected the next day.

Testimony was given by a servant in Shipp's house that a week before Johnson was lynched Shipp was heard to say that if the execution were stayed Johnson would be mobbed. This was, however, disputed by Shipp and relatives of his who were there at the time.

On May 28th, at Birmingham, Alabama, defendant Shipp himself, in an interview reported and printed the next morning in The Birmingham Age-Herald, said:

"'The first I knew of the mob was through a telephone message I received from The Chattanooga Times office, for they had cut the wires at the county jail immediately upon their arrival. I dressed as quickly as possible and went to the jail, and found a crowd of about seventy-five people around it, most of them being in disguise. I made my way through the crowd into the jail and began remonstrating with them against taking any drastic steps. They seized me and took me upstairs, locking me up in a bathroom. The members of the mob told me they meant no violence to me. I argued with them against doing anything at all, since the law had so far taken its proper course. *I am frank to say that I did not attempt to hurt any of them, and would not have made such an attempt if I could.* In the first place, I could have done no good, as I was overwhelmed by numbers.

"'The Supreme Court of the United States was responsible for this lynching. I had given that negro every protection that I could. For fourteen days I had guarded and protected him myself. The authorities had urged me to use one or two military companies in doing so, but I told them I would land the negro in jail, which I did, individually.

"'Many nights before the lynching there had been a sufficient guard around the jail. *I had looked for no trouble that night and, on the contrary, did not look for it until the next day.* That night no one was on duty except the jailer, which is the usual guard at our jail, as well as in other counties.

"'In my opinion the act of the Supreme Court of the United States in not allowing the case to remain in our courts was the most unfortunate thing in the history of Tennessee. I was determined that the case should be put in the hands of the law, as it was. The jury that tried the negro Johnson was as good as ever sat in a jury box.

"'The people of Hamilton County were willing to let the law take its course until it became known that the case would not probably be disposed of

for four or five years by the Supreme Court of the United States. The people would not submit to this, and I do not wonder at it.

"'These proceedings in the United States Supreme Court recently appear to me to be only a matter of politics. I do not wish to appear in the light of defying the United States court, but I did my duty. I am conscious of it, thoroughly conscious of it, and I am ready for any conditions that may come up.'"

The testimony of the reporter that Shipp made these statements was corroborated by the evidence of another reporter who interviewed Shipp on the following day regarding them, and is not denied by Shipp except in an immaterial particular. From this it appears that defendant Shipp looked for trouble on the 20th, but, as he says, not that night; that he did not attempt to hurt any of the mob, "and would not have made such an attempt if I could."

He evidently resented the necessary order of this court as an alien intrusion, and declared that the court was responsible for the lynching. According to him, "the people of Hamilton County were willing to let the law take its course until it became known that the case would not probably be disposed of for four or five years by the Supreme Court of the United States." "But," he added, "the people would not submit to this, and I do not wonder at it." In other words, his view was that because this court, in the discharge of its duty entered the order which it did, that therefore the people of Hamilton County would not submit to its mandate, and hence the court became responsible for the mob. He took the view expressed by several members of the mob on the afternoon of the 19th and before the lynching, when they said, referring to the Supreme Court, that "they had no business interfering with our business at all." His reference to the "people" was significant, for he was a candidate for re-election and had been told that his saving the prisoner from the first attempt to mob him would cost him his place, and he had answered that he wished the mob had got him before he did.

It seems to us that to say that the sheriff and his deputies did not anticipate that the mob would attempt to lynch Johnson on the night of the 19th is to charge them with gross neglect of duty and with an ignorance of conditions in a matter which vitally concerned them all as officers, and is directly contrary to their own testimony. It is absurd to contend that officers of the law who have been through the experiences these defendants had passed through two months prior to the actual lynching did not know that a lynching probably would be attempted on the 19th. Under the facts shown, when the sheriff and his deputies assert that they expected a mob on the 20th, they practically concede the allegation of the information that they were informed and had every reason to believe that an attempt would be made on the evening of the 19th or early on the morning of the 20th.

In view of this, Shipp's failure to make the slightest preparation to resist the mob; the absence of all of the deputies, except Gibson, from the jail during the mob's proceedings, occupying a period of some hours in the early evening; the action of Shipp in not resisting the mob and his failure to make any reasonable effort to save Johnson or identify the members of the mob, justify the inference of a disposition upon his part to render it easy for the mob to lynch Johnson, and to acquiesce in the lynching. After Shipp was informed that a mob was at the jail, and he could not do otherwise than go there, he did not and in fact at no time hindered the mob or caused it to be interfered with, or helped in the slightest degree to protect Johnson. And this in utter disregard of this court's mandate and in defiance of this court's orders.

Let us recapitulate the facts bearing immediately on defendant Shipp.

About 9 o'clock on the night of the 19th the judge before whom Johnson was tried, and the attorney who prosecuted him, communicated with Sheriff Shipp at his house, saying that there were persons around the jail who looked suspicious, and suggesting that the sheriff had better go down to the jail.

At that time a report was generally circulated in the city that a mob was at the jail to lynch Johnson.

Shipp lived only a few blocks from the jail. He reached the jail about nine. He was alone. A number of people were in the jail and outside of it when he arrived. He anticipated a mob was inside.

Without stopping to speak to any of these people he rushed inside of the jail to the foot of the stairs leading to the floor Johnson was on. There he was taken hold of by five or six men and carried upstairs. The men who took hold of him had no firearms.

At first he was put in a bathroom, and then was released and stood around near the corridor door, where the mob was at work, with three or four unarmed men around him. He made no effort to get away or use force in opposing the mob. He did not attempt to use his pistol or call for help. After the corridor door had been broken in, either Shipp or defendant Gibson told the mob which cell Johnson was in. When the mob left the jail with Johnson, Shipp did not follow or make any effort to rescue Johnson or get others to help rescue him. He was not locked up when the mob left the jail, but was left entirely free.

When the crowd following the lynchers was about two blocks from the jail, Shipp came out of the building alone and unguarded. To a request made by a man at that time to go and identify members of the mob, Shipp replied that it would be dangerous and foolish. This request was made before the shooting occurred.

A special deputy met Shipp at the jail just after Johnson had been

taken out and before he was shot. Shipp told him that the mob had Johnson. Shipp was quiet, and made no effort to go after the lynchers, or to reach the police or militia or others.

When he reached the jail he could have gone about three blocks to the police station and got the police.

No alarm bell was rung at the court house that night, although it was rung the night of the attempted lynching January 25, and it drew out a big crowd. No attempt was made by Shipp or others to summon a posse. He sent no one after deputies. He made no effort to send any one for help.

It is testified that some time after the mob had left the jail for the bridge, Shipp sent Galloway and Clark down to the bridge, but he made no effort to go himself.

There was in the crowd around the jail and at the scene of the lynching a substantial number of law-abiding men of good character.

That assistance in suppressing the mob might have been easily obtained if effort had been made is shown by the testimony of the chairman of the board of safety, who testifies that at the time of the first lynching in going four or five blocks to the jail he gathered about 16 men to help put down the mob.

The militia was drilling on the night of the 19th between 8 and 10:30 in the armory, a well-known place, three blocks from the jail. It was not called upon to assist in suppressing the mob, although it had been called out twice before by the governor, and was bound to respond to another call by him.

The governor had given assurances that any help asked for would be given, and we have no doubt he would have responded, for he would have had the honor of Tennessee in his keeping.

Numerous witnesses testify that no firearms were displayed by the mob except that one of their number was in the office of the jail with a Winchester rifle, and one pistol was exhibited to a reporter when the door was being broken open.

No deputies put in an appearance while the mob was at the jail or during the lynching, except Frank Jones, who approached the jail with a prisoner, but upon seeing the mob immediately left with the prisoner, and excepting Matt Galloway, who was seen in the crowd.

From the time he reached there, about 6 o'clock, until the mob came, Gibson was the only officer in charge of the jail. But there was much evidence that customarily many deputies were there nightly, and that several were present on the night of the 19th until just before the irruption of the mob.

Heavy iron chains were sometimes used as additional guards upon circular doors in the jail, such as that leading to Johnson's corridor. These

were locked by the prisoners on the inside. During the trial of Johnson these chains were used on the circular doors. But none were on the circular door leading to Johnson's cell on the 19th. It also appears that Johnson's cell door was not locked.

Winchester rifles which were kept to defend the jail against mob violence were, at the time the mob attacked the jail on the 19th, in a show case in the office. These were taken out of the show case by the mob and unloaded.

Although Shipp was in the midst or near the members of the mob for about an hour when they were in the jail, he did not seek to obtain information so that he could identify any of them, and he testifies that he does not know any member of the mob.

Only one conclusion can be drawn from these facts, all of which are clearly established by the evidence—Shipp not only made the work of the mob easy, but in effect aided and abetted it.

Gibson is involved in the same condemnation though under less responsibility, We think belief on his part that a mob would attempt to enter the jail and lynch Johnson on the night of the 19th must be presumed.

The day jailer left the jail some time after six o'clock, and transferred the keys to Gibson, the night jailer. Gibson's 15-year old boy was with him, but went to the opera house at 8.30. Gibson was in charge of the jail more than two hours before the arrival of the mob, and he made no effort to summon assistance to repel the attack, although necessarily he must have known that he alone could only offer slight resistance. Mrs. Baker, a white woman, confined on the same floor with Johnson, testified that Gibson, soon after arriving at the jail, when she had gone down stairs to get a letter written, said to her that a mob was coming, and directed her to go to her room, and when the mob was at the jail came to her door and told her that no one would hurt her. Gibson admits the last statement, but denies the first.

He testifies that when he heard the mob he went into the hospital cell, located on the top floor, and sat down on a lounge, and as soon as the mob got upstairs he handed over to them his pistol and the keys, including a key to the door of Johnson's cell; that he did not try to use the pistol, or to resist the mob by force; that from the top floor he could have gone through the kitchen into the yard and back of the jail, but he made no effort to do so, although it took the mob some ten minutes after he knew they were there to break through the door between the outer door and the jail proper; that he just gave up and made no effort at all to resist the mob or rescue Johnson after they had left the jail; that although the men were bold in their work, he failed to recognize any one excepting Nick Nolan.

Galloway was a deputy sheriff from the time Johnson was convicted

until after the lynching, and was told by the sheriff after the mob had left for the bridge to go down there, and did so, but Johnson was then dead. He was Criminal Court deputy, and served Criminal Court papers and made arrests. But he had no charge of the jail or keeping of prisoners except when officially so assigned. He had no connection with the jail or the prisoners at any time after Johnson was brought from Knoxville on the 10th or 11th of March. He testified that he had heard nothing while attending to his duties that made him think Johnson was in danger; was a member of the Eagle Club, and was there on evening of the 19th, at 7:45, not having heard prior thereto anything about any impending lynching. His first information of the lynching was after 10 o'clock, when he went to the jail at once. There he met the sheriff, who asked him to go to the bridge, which he did, but Johnson was dead. We think Galloway must be acquitted of the charges in the information.

This brings us to a consideration of the case in respect of the six defendants, who are charged as members of the mob and participants in its action.

As to Williams and Nolan, there is direct testimony to their participation in the lynching, and we do not think that the evidence relied on to weaken that conclusion is sufficient to do so.

As to Padgett and Mayse, there is testimony of statements on their part on the afternoon of the 19th and the morning of the 20th, which, if believed, demonstrates their guilt. We have carefuly examined and analyzed the evidence to impeach the principal witness to these conversations, and also to make out alibis, but we cannot accept it as convincing.

We hold that the case as to Justice and Ward fails on the evidence.

In our opinion it does not admit of question on this record that this lamentable riot was the direct result of opposition to the administration of the law by this court. It was not only in defiance of our mandate, but was understood to be such. The Supreme Court of the United States was called upon to abdicate its functions and decline to enter such orders as the occasion, in its judgment demanded, because of the danger of their defeat by an outbreak of lawless violence. It is plain that what created this mob and led to this lynching was the unwillingless of its members to submit to the delay required for the appeal. The intent to prevent that delay by defeating the hearing of the appeal necessarily follows from the defendants' acts, and if the life of any one in the custody of the law is at the mercy of a mob the administration of justice becomes a mockery. When this court granted a stay of execution on Johnson's application it became its duty to protect him until his case should be disposed of. And when its mandate issued for his protection was defied, punishment of those guilty of such attempt must be awarded.

The rule will be discharged as to the defendants Galloway, Justice and Ward, and made absolute as to the other defendants.

Rule discharged as to defendants Galloway, Justice and Ward, and made absolute as to defendants Shipp, Gibson, Williams, Nolan, Padgett and Mayse. Attachments to issue, returnable on Tuesday, June 1.

Mr. Justice MOODY did not hear the argument and took no part in the disposition of the case.

No. 2.

Ed Johnson, Appellant, *vs.* The State of Tennessee. } Appeal from the Circuit Court of the United States for the Eastern District of Tennessee.

[May 24, 1909.]

The CHIEF JUSTICE: Appeal abated by death of appellant, and case dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 5, Original.—October Term, 1908.

The United States of America
vs.
Joseph F. Shipp et al. } Information in contempt.

[May 24, 1909.]

Mr. Justice Peckham dissenting.

I dissent from the opinion and judgment of the court in this case, and I think its importance requires a statement of the reasons for my dissent. In regard to the crime which was perpetrated by the mob upon the person of the negro there can be but one opinion. I take it that all intelligent and respectable citizens who are cognizant of the facts agree that it was murder, without one extenuating circumstance to relieve its atrocious character. The important question, however, is, first, as to the sheriff—whether he is guilty of the charge made against him in the information filed in this proceeding. The charge, as contained in the information, upon which such a vast amount of evidence has been taken, is that the sheriff, and many other persons, conspired together for the purpose of breaking and entering the county jail and taking therefrom the negro Johnson, in order to lynch him, with the intent to thereby show their contempt and disregard of the order of this court and to prevent the hearing of the appeal.

A careful consideration of the case leaves me with the conviction that there is not one particle of evidence that any conspiracy had ever been entered into or existed on the part of the sheriff, as charged against him. It is not alone that the evidence preponderates in his favor, but it seems to me there is no material evidence against him, certainly none that rises higher than the merest possible suspicion, founded upon evidence of facts which are in themselves wholly inconclusive, and just as consistent with innocence as with guilt. His character is shown by many witnesses to be that of the highest. Not a man in Chattanooga stands better as a man and a citizen than he does. There is not a particle of evidence to the contrary. He has lived an honored and respected citizen of that city since 1874; has held honorable official positions before the one that he now holds, and yet, as an old man, he is adjudged guilty of a contempt of this court and liable to serve a disgraceful imprisonment because, as is insisted in this record,

he did not do as much towards resisting a lawless mob as this court says he ought to have done.

The crime for which Johnson was convicted was perpetrated on a white schoolgirl on the 23d of January, 1906, and on the 25th of that month Johnson was arrested near Chattanooga and charged with the crime. After being arrested he was taken by the sheriff, by order of the State Criminal Court, to the jail at Nashville, where he was kept until the day of his trial, February 6. The sheriff was active and intelligent in his efforts to preserve the safety of the negro. No adverse criticism is or can truthfully be made upon his conduct at that time. At the time of the arrest of the negro there is no contradiction in the evidence that there was very great excitement and a disposition evinced to lynch Johnson at once. A crowd of over a thousand, it is said, surrounded the jail on the night of the 25th of January, where Johnson was supposed to be, but the prisoner was not in the jail, and the deputies of the sheriff (the sheriff himself, having Johnson in custody, was taking him to Nashville) exhorted the mob to disperse, and finally people were sent into the jail on behalf of the mob, and went through it to satisfy themselves that Johnson was not there. The mob thereupon dispersed. On the 26th of January a grand jury was convened and Johnson was indicted, and on the 6th of February he was brought to Chattanooga from Nashville, and his trial was commenced that day in the Criminal Court. On February 9 he was convicted and sentenced to death. No appeal was taken by the lawyers appointed by the court to defend him from that sentence. The lawyers said they feared the prisoner would be lynched if such an appeal were taken. On his conviction he was taken from Chattanooga to Knoxville, in the personal custody of the sheriff, to be safe from any possible violence of the mob. No mob, however, appeared, and nothing was attempted. The judge who presided at the trial of the negro, after his conviction, told the sheriff that the prisoner would be entirely safe at Chattanooga. After the trial the excitement decreased very greatly and seemed to disappear entirely. Of this fact there is no contradiction in the evidence. On the 3d of March a petition for a writ of *habeas corpus* was filed in the United States Circuit Court for the Northern Division of the Eastern District of Tennessee on the part of Johnson. On the 10th of March the petition was denied, and the Circuit Judge ordered that Johnson be remanded to the custody of the sheriff of Hamilton County (at Chattanooga), Tenn., to be detained by the sheriff in his custody for ten days, in which to permit Johnson to prosecute an appeal from the order, and in default of the prosecution of such appeal further proceedings to be taken in the State court of Tennessee, under its sentence. Immediately after this decision Johnson was taken back to Chattanooga, arriving there March 11. Everything was quiet and there was no evidence of excitement, nor of any intention whatever to interfere with the negro.

The sheriff kept watch of public sentiment for several days thereafter. He was himself going about through the city, mixing with all manner of crowds, and found not the slightest evidence that would lead any reasonable man to believe that any assault was intended upon Johnson. The sheriff stated that he did some canvassing in his election campaign during this time, and was around in the manufacturing establishments and saw no excitement and heard no talk of the case during the whole time. There was nothing at all, says the sheriff, that came to his knowledge during this time that would have put a prudent and careful man on his guard.

On the 19th of March, the day preceding the night of the lynching, the same thing was noticed of a total lack of any evidence of any excitement or of any evidence of an intention to commit any violence. Thus from the 11th to the 19th of March—from the time that Johnson was brought back from Knoxville to Chattanooga, after Judge Clark, the United States judge, had denied his petition for *habeas corpus*—the city was entirely tranquil and nothing was done which would have caused any man, even the most circumspect and prudent, to believe that any violence was intended. During the time, from the 11th to the 19th of March, there had been no extra guards at the jail because of these facts. No demonstration had been made against the jail and no threats made against the prisoner that anybody heard. Judge Clark, now deceased, who had been a resident of Chattanooga since 1883, was a witness in this proceeding, and stated that he had never heard anything suggested as to there being any danger to Johnson if the stay of execution were granted in his case. Judge Clark said: "It strikes me it was absolutely absurd in view of what actually occurred." The judge was also asked whether anything said at the trial of the *habeas corpus* proceedings on the part of the representatives of the State, or on the part of any one, caused him to apprehend any mob violence to this man, and the judge said, none in the least. The judge also said that he had asked his secretary on the day that he was at Chattanooga on his way to St. Augustine if he had heard of any suggestions or hints of violence or dissatisfaction with the situation, and the secretary told him that he had not. On the 19th of March, he had, he said, called up some one of the defendant's attorneys and found out that the appeal from the order denying the *habeas corpus* had been allowed by the Supreme Court of the United States, and the judge said to the attorney that he would be there all day at his office and would leave for Florida that night. The judge said the reason he made that announcement was that he had known that Johnson had been taken to another jail prior to this, and that he was brought out of the Knoxville jail when the petition for *habeas corpus* was brought up before him (Judge Clark). "Therefore," Judge Clark said, "on account of that, after getting Mr. Justice Harlan's telegram, I would have ordered the man to any jail

where it was desired to send him . . . if it had appeared that the prisoner was in great or real danger—if that had appeared to me—I am quite sure that I would have made the order of my own motion, or would have called up his attorney and suggested that he make an application for his removal." The following question was also put to the judge: "Q. Judge Clark, I will ask you if the attorney to whom you talked or any other attorney for the defendant Johnson, or any other person, suggested to you the necessity or even the propriety of taking steps to protect your prisoner, the Federal prisoner Johnson? A. I never heard the remotest suggestion, and I did not think the man was in any danger. I thought it was simply the noise that is generally made by people who really do not expect to do anything. . . . I will say that I had heard no suggestion and that I had no thought that there was any danger on hand anywhere." If there had been any evidence of danger or the possibility thereof, would not the attorneys of the negro who were engaged in the prosecution of their *habeas corpus* proceedings have responded to the judge, and asked for the removal of the negro to another jail? They did not ask for it because, as is perfectly evident, they shared the general opinion that there was no danger; that the former danger had passed, and there was no reason for further action.

The same kind of evidence was given by the most respectable men in the community—editors, reporters, railway agents, large employers of men, clergymen, lawyers, doctors and business men, citizens of the place, and also by the chief of police of the city. Not one of them apprehended danger of mob violence at that time. All of these men were cognizant of the facts as to the prior attempts at lynching and as to the high state of excitement which existed at that time. But they all agreed that such excitement had entirely passed and that there was not the least danger to be apprehended. One of these ministers, the Rev. Mr. Boswell, had been a resident of the city for nearly four years, and was a member of what is termed the Pastors' Union of Chattanooga. He was also a fraternal delegate from the Pastors' Union to the Central Labor League, composed of delegates from every labor organization in the city, and, as a member of the Pastors' Union, he co-operated with the Central Labor League as a fraternal delegate. He also preached on an average twice a week in the various shops in the city. He said that at the time of the arrest the public feeling was intense and that it subsided with the beginning of the trial. He was present during most of the trial; that after the trial was over he found no talk that would cause him to apprehend that there might be an attempt to lynch the prisoner. He had, he said, preached a sermon on lynching after the first attempt was made and had taken the position that it was a violation of good citizenship, and did not mince his words at all, and

yet with all these opportunities to know the state of public feeling he said that there was nothing that would arouse apprehension on his part, or, so far as he could see, on the part of any prudent man, that there was any lynching threatened. And this, too, after it was known that this court had allowed the appeal from Judge Clark's order. The evidence of the other witnesses was of the same character, and there were unanimous expressions of opinion by the witnesses upon the hearing of this case, that there was no question of danger of mob violence to be apprehended up to the very last moment; and yet counsel for the Government have regarded it as part of the evidence of the guilt of the sheriff as a conspirator that he acted as if he did not apprehend any violence, and that he took no steps to prevent it on the day in question. No one else had any idea that there was any danger and no one else was looking for it. The men who testified that there was no apprehension of mob violence were men who were specially cognizant of the state of public opinion at that time. The counsel for the Government insisted that it was the duty of the sheriff to have had the jail guarded on that day by extra guards, and that his failure to do so was evidence of his being guilty of the conspiracy as alleged in the information. Although the fact was announced in the morning papers of the 19th that the allowance of the appeal had been granted by this court, there was during the day no evidence of excitement and no hostile demonstration or suspicion of it against the prisoner, and no evidence of any fact going to show any projected formation of a mob or the least probability of any lynching or any attempt that night. Under these circumstances, on the 19th of March the sheriff went home about half-past six in the evening, leaving things at the jail the same as usual. Suppose, as a matter of judgment, the sheriff should have proceeded as if this almost universal sentiment as to the absence of all danger was erroneous, or not well founded, and that as matter of good sense he should have had the jail guarded, is it possible that he can be properly convicted of contempt while he agreed with this public sentiment and acted accordingly? At any rate, he went home as usual, and was sitting at his desk in his home when the telephone sounded some time about nine o'clock and he recognized, upon going to it, the voice of the Attorney General, Whittaker, who asked him if he knew what was going on at the jail, and the sheriff said, "No," and the Attorney General said, "You had better go down there." He went down there as rapidly as he could, running most of the way and walking rapidly for the rest, and, being under the care of a physician for a difficulty of the stomach, he was much exhausted when he arrived at the jail, where a large number of men were assembled, many of them armed, and they immediately surrounded and took possession of him. Many of them were masked and were waiting for their comrades to bring Johnson down. The

sheriff expostulated and remonstrated with these men and asked them to desist, when they seized him. He was seized from behind, and he testified that he did not know but that they were going to do him some violence, and he reached back for his gun, which he had in his pocket. They assured him that they did not intend to hurt him and then they seized and rushed him up the stairs and carried him into a hallway, where he was kept a prisoner until after the crowd had got Johnson and left the jail with him. The sheriff was sixty-three years of age at this time, and, on account of his physical condition, unable in any event to have offered any great resistance. There were at least ten or fifteen of the men around him who were armed, and the sequel proved that many more in the crowd were also armed. Others were standing back looking on. Whether the sheriff might possibly have been quicker with his gun and taken it out of his pocket and shot some of them, is not certain, from the evidence, but the odds of even ten or fifteen to one are somewhat large, and that he did not kill, or attempt to kill, any of them is no evidence whatever of complicity with these miscreants, and certainly no evidence of contempt of this court. It seems to me most extraordinary that even an official under these circumstances can be found guilty of a contempt because in fact he did not resist to the death.

Argument has also been made against the sheriff, based on the fact that on his way from the house to the jail he did not seek out the militia, a company of which is said to have been engaged in drilling that night in its drill room, and ask for assistance immediately at the jail. It may be that such would have been a wise course, but he was acting on the spur of the moment and under a call to come immediately to the jail, and he was not sure of what was going on, and in seeking the aid of the militia he was not certain to succeed in obtaining immediate assistance. At any rate, the mere fact that he did not think of it or stop to do it is no evidence whatever to show that his failure to seek its aid was criminal. I think the conspiracy part of the information is absolutely without evidence to support it.

It is, however, argued that the sheriff did not otherwise do all that he should have done to prevent this infamous crime, and hence that he is guilty of a contempt. As evidence of this fact the Government refers to the interview of the 28th of May between the sheriff and a newspaper reporter in Birmingham. On that day, at the time of the interview, news had been received of the action of this court ordering certain persons to show cause as for contempt. In this interview Sheriff Shipp said that the first he knew of the mob was through a telephone message; that he went to the jail and made his way through the crowd, and remonstrated with them against taking any drastic steps. They seized him and took him upstairs, locking him in a bathroom. The members of the mob told him

they meant no violence to him. He argued with them against doing anything at all, since the law had so far taken its proper course, and the interview went on with this statement: "I am frank to say that I did not attempt to hurt any of them, and would not have made such an attempt if I could. In the first place, I could have done no good, as I was overwhelmed by numbers." The sheriff's statement that he made no attempt to hurt any of the mob, and would not have made such an attempt if he could, must be taken with the rest of his statement, in which he said that "in the first place, he could have done no good by it, as he was overwhelmed by numbers." There is no doubt of the truth of that statement. He was one man against, at the very least, ten or fifteen or more resolute men, armed and assembled for the purpose of getting this negro, and surrounded by a still larger crowd in the jail yard, and there is not the slightest evidence that they were unarmed. Their subsequent action shows an unnecessary supply of guns. It is true, the sheriff might possibly have drawn his gun and fired at the masked men as he came into the jail and succeeded in killing one and perhaps more of the members of the mob, but it is absolutely true that it would have done no good even then, because with such odds against him his struggles could have resulted only in his being actually overwhelmed and possibly killed, while the negro would not have been saved. The sheriff occupied no vantage ground from which to repel an attack and where his first assailant would stand a good chance of being killed by him. He was not only in the power of the mob who had him in custody, but he was also without any one to appeal to for aid. Those who were bystanders knew of the sheriff's difficulty without further appeal by him, and yet they seemed to feel no desire to interfere or else recognized the uselessness at that time of any effort.

The evidence of witnesses for the Government showed without contradiction that the sheriff came to the jail running as fast as he could; that he pushed through the crowd, shoved the men aside and entered the inside of the enclosure, never stopping at all, and the moment he arrived at the jail door he was set upon and seized by four or five men and overpowered, and he talked to and expostulated with the crowd, trying to reason with them and to get them to stop. When asked if the sheriff made any show of force, the Government witness said, "Well, he didn't have any chance to," and the question being repeated, the witness said, "Well, he did, yes, but he was overpowered," that "he resisted their efforts to hold him," by "trying to pull away." (Evidence of Curtis, one of the reporters on The Chattanooga Times, and a witness for the Government.) The evidence of another reporter, Mr. Chivington, and a Government witness, was to the same effect, that the sheriff was seized by four or five men and overpowered,

and carried upstairs, and that he appealed to the mob not to lynch the negro. The witness also said that at this time, just as the sheriff was seized, the witness imagined he saw the sheriff "like he was going to draw a pistol, but before he could move any further there were five or six fellows grabbed him and carried him bodily to the top of the stairs."

All this time there was not an offer from a single man to aid the sheriff when they saw him seized, nor did any of them spread any alarm or ask for any outside aid, and the sheriff says he did not ask for it because he knew it would be useless to make any such appeal to the persons there, and that every one there knew the situation, and the overwhelming numbers of the crowd surrounding the premises and in the jail.

Of course, as the witnesses heard the sheriff expostulating with and begging the crowd to do no harm to the negro, if there had been the least disposition on the part of any one to come to his aid the opportunity to do so was quite open and plain.

The appearance of the sheriff after the taking of the negro, and the effect of the whole occurrence upon him is stated in the evidence, about which there is not the slightest contradiction. He was greatly excited, and almost in a faint. He was as white as a sheet, and said to the witness, "My God! I did everything I could." He also said in the course of the interview with the witness, "'My God! they have ruined me.' He had all the appearance of a man who was ready to collapse. You could barely understand what he said. His voice was in a tremble, like a voice filled with emotion." This is the evidence of Mr. Horan, and it is nowhere contradicted. And yet the Government claims that in such a case the sheriff should be imprisoned for a contempt of this court because he did not do more in the way of resistance to an overwhelming force, and did not foresee with more clearness than any one else what was to happen on the night of the 19th, and take measures accordingly to guard the safety of the negro. It seems to me that the opinion of the court is founded upon this view.

Then, again, this is not a question as to whether possibly the sheriff might have done more than he did. Some men, under such circumstances, might perhaps have earlier attempted to draw their guns, and would possibly only have ceased resistance with their lives. But when one is really overpowered, superior force makes efforts at resistance futile, if not foolish. Other men might do less than this man did and still be absolutely innocent of a contempt. The question is not whether this invalid old man did everything that he possibly could have done up to the last extremity and at the risk of his life in the performance of his duty as sheriff. To be free from any contempt of this court it was not necessary that the sheriff should have stood by the prisoner at the peril of his own life or that he should have sacrificed it in an unsuccessful

attempt against overwhelming odds to prevent the mob from taking the prisoner out of his custody. The sheriff, under circumstances such as are detailed in this case, should be freed from the charge of contempt if he were not guilty of any conspiracy with others to lynch the prisoner, and if he honestly and fairly did what he could in the way of remonstrance and exhortation to prevent the lynching. Being in the power of the mob, he was not called upon to sacrifice his life in a desperate and hopeless attempt to save his prisoner against odds, such as appeared in this case, or else take the risk of being adjudged guilty of a contempt of court. But what could the sheriff have done more than he did do? That he was in the power of these men is absolutely without contradiction from the evidence. If he had had his pockets full of pistols he could have done nothing with them, as the evidence shows, the moment he was seized by the crowd. His statement that the mob took action because of the allowance of the ~~writ of error~~ appeal by this court, which they thought might involve great delay, and that the mob would not stand for that, is but the expression of an opinion by the sheriff as to the reason for the lynching. He does not and did not pretend to justify the action. In all probability that was the reason—a dislike of the interference of this court—a reason utterly without justification and disgraceful to those who entertained it. But the sheriff surely cannot be properly convicted because he simply truthfully stated the sentiments which in his judgment actuated the mob. It is not a crime to entertain an opinion as to what moved a mob under these circumstances nor can this court properly, in my judgment, convict an official of contempt because he stated his belief that the mob acted from this most disgraceful reason. Nor is the opinion, as expressed, the least evidence of the guilt of the sheriff of the contempt with which he is charged, or of any conspiracy to commit it.

In the interview the sheriff also said he had looked for no trouble that night, and on the contrary did not look for it until the next day. It will be remembered the next day was the one appointed for carrying into execution the sentence of the State court, and when the day should pass without the sentence being carried into execution the sheriff said afterwards that he apprehended there might be trouble. But that was the next day, and the trouble apprehended would be founded upon the happening of that day, and there was an abundance of time in which to prepare for what might then be attempted. Whatever the sheriff may have thought of the delay which might be caused by the appeal to this court, or however ill-founded his opinion as to the probable length of that delay, his thoughts on the subject furnish no evidence even tending to show that he conspired with the mob or that he would not do what he could to protect his prisoner when the exigency arose and the time for action arrived. He may have

thought there would be great delay, and for that reason did not wonder the people would hate to submit to it. All this, however, is mere evidence as to what it was supposed a mob might do the next day, but is, as I have repeated already, no evidence of conspiracy on the part of the sheriff to aid the mob, and none that he was guilty of a contempt in not resisting or attacking it up to the point of imperilling his life in a futile attempt to protect his prisoner. It seems to me that the sheriff is being held to a degree of responsibilty far beyond any reasonable limit, and not justified by the evidence contained in the record.

The Government based its argument for a conviction of the sheriff very largely upon the interview above referred to, and which I have commented on at some length. Strike that out and there is really nothing whatever on which to base the shadow of a claim for a conviction. For the reasons given I think the interview itself is wholly insufficient as evidence of the guilt of the sheriff, and I think the rule to show cause should be discharged as to him. I also think the evidence is too slight upon which to convict the jailer.

I am authorized to say that Mr. Justice WHITE and Mr. Justice McKENNA concur in this dissent.

True copy.

Test:

Clerk Supreme Court, U. S.